

**CALIFORNIA COASTAL COMMISSION**

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**Tu 8a** <sup>RSM</sup>



Staff: Jo Ginsberg  
 Staff Report: December 23, 1997  
 Hearing on Rev. Findings: Jan. 13, 1998  
 Commission Action on Findings:

STAFF REPORT: REVISED FINDINGS

**APPEAL NO.:** **A-1-FTB-97-33**

**APPLICANT:** **DON AND HELEN MILLER**

**LOCAL GOVERNMENT:** City of Fort Bragg

**DECISION:** Approval with Conditions

**PROJECT LOCATION:** 1141 North Main Street, Fort Bragg, Mendocino County, APN 069-241-31.

**PROJECT DESCRIPTION:** Demolition of an existing 11-unit motel (Ocean View Lodging) and construction of a new two-story 30-unit motel, parking, and landscaping.

**APPELLANT:** **Friends of Fort Bragg**

**AGENT FOR APPELLANT:** Roanne Withers and Ron Guenther

**COMMISSION ACTIONS:**

June 13, 1997:	Found the Appeal Raised a Substantial Issue
August 14, 1997	Approved the Application with Conditions

**COMMISSIONERS ON THE PREVAILING SIDE (SUBSTANTIAL ISSUE):** Commissioners Allen, Kehoe, Nava, Potter, Rose, Tuttle, Hisserich, and Chairman Areias

**COMMISSIONERS ON THE PREVAILING SIDE (DE NOVO REVIEW)** Commissioners Allen, Kehoe, Nava, Pavley, Potter, Reilly, Tuttle, Wan, and Chairman Areias

**SUBSTANTIVE FILE DOCUMENTS:** Fort Bragg Local Coastal Program; Fort Bragg CDP 10-96/SCR 10-96.

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STAFF NOTE

At the Commission meeting of June 13, 1997, the Commission found the appeal raised a substantial issue with regard to the project's conformance with the City of Fort Bragg's certified LCP, and directed staff to come back with a recommendation on the project for a de novo hearing. At the meeting of August 14, 1997, the Commission held a de novo hearing on the project, and approved the project with conditions similar to the conditions the City imposed on its permit. However, as the Commission's actions on the substantial issue question at the June 13, 1997 meeting differed from the written staff recommendation, staff has prepared the following set of revised findings found in Part One, Section IV below, for the Commission's consideration as the needed findings to support its action. These findings reflect the action taken by the Commission at the meeting of June 13, 1997 on the Substantial Issue question. In addition, staff prepared an addendum for the August 14, 1997 de novo hearing which contained some changes to conditions recommended in the original staff report. Thus, staff has also prepared the following set of findings, found in Part Two, Section IV below, for the Commission's consideration as the needed findings to support its de novo action at the meeting of August 14, 1997.

The purpose of the hearing is to consider whether the revised findings accurately reflect the Commission's previous actions rather than to reconsider whether the appeal raised a substantial issue or to reconsider the merits of the project or the appropriateness of the adopted conditions. Public testimony will be limited accordingly.

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STAFF RECOMMENDATION:

1. The staff recommends that the Commission adopt the revised findings in Part One, Section IV below (pages 5-12) in support of the Commission's action on June 13, 1997, finding that a substantial issue exists as to the conformity of the project with the policies of the certified Local Coastal Program.

(NOTE: Only those Commissioners on the prevailing side on the Commission's action on the appeal at the June 13, 1997 hearing are eligible to vote. See the list on Page 1.)

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2. The staff recommends that the Commission adopt the revised findings in Part Two, Section IV below (starting on page 17) in support of the Commission's action on August 14, 1997, approving the project with conditions.

(NOTE: Only those Commissioners on the prevailing side on the Commission's action on the permit at the August 14, 1997 hearing are eligible to vote. See the list on Page 1.)

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PART ONE - SUBSTANTIAL ISSUE

For reference, the Commission's adopted resolution precedes the proposed revised findings.

I. ADOPTED RESOLUTION

The Commission determines that a substantial issue exists as to conformity with the policies of the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Section 30603 of the Coastal Act.

II. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Appellants' Contentions

The Commission received an appeal of the City of Fort Bragg's decision to approve the project from the Friends of Fort Bragg. The project as approved by the City consists of the demolition of an existing 11-unit motel and the construction of a new two-story 30-unit motel, parking, and landscaping on a parcel located on the west side of Main Street (Highway One) in the City of Fort Bragg. The appellant's contentions are summarized below, and the full text of the contentions are also included as Exhibit No. 8.

The appellants' contentions involve inadequacies in the review process, visual impacts, water supply, and protection of vegetative resources, as described below.

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1. Procedural Inadequacies

The appellants assert that the City of Fort Bragg is misusing its Scenic Corridor Review Use Permit (SCR) and related Zoning Codes to bypass and/or supercede provisions contained in its Coastal Zone Municipal Zoning Code, its Local Coastal Program/Land Use Plan, and the Coastal Act.

2. Inadequate Environmental Review.

The appellants assert that the City has misinterpreted the CEQA "project" definition, has done an inadequate environmental review of the SCR, and should do a full EIR on the motel's impacts.

3. Visual Resources

The appellants assert that the new motel is not sited and designed to protect visual resources, inconsistent with the LCP; that the City has not considered the cumulative visual impacts of the new two-story motel; and that the motel is too close to the publicly used Haul Road.

4. Overdrafting of the Noyo River.

The appellants assert that the City has not considered the cumulative impacts of the project on water availability and impacts on protected species dependent on the Noyo River Coastal Zone area; that the City's Water Retrofit Program for new water connection does not mitigate the City's overdraft of th Noyo River and violation of its fish by-pass flows in the Noyo River; that there is no assurance that the Retrofit In-Lieu Fee will realize actual water saved, or added water protection.

5. Water Supply.

The appellants assert that the project is not consistent with the water policies of the LCP.

6. Protection of Vegetative Resources

The appellants assert that a stand of 16- to 25-foot-high trees located on the north side of the subject property that are not shown on the applicant's site plan or landscaping plans will be cut down without a coastal permit, based on the fact that the proposed parking and buildings are located where these trees now stand.

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B. Local Government Action

On February 26, 1997, the City of Fort Bragg Planning Commission approved Coastal Development Permit 10-96, and denied Scenic Corridor Review (SCR)10-96. The City issued a Notice of Final Action on the Coastal Development Permit (CDP), even though the SCR had not been approved (see Exhibit No. 10). The applicants, Don and Helen Miller, appealed the Planning Commission's February 26, 1997 denial of the Scenic Corridor Review to the City Council. On April 14, 1997, the City Council upheld the appeal of Don and Helen Miller, reversing the Planning Commission decision on the SCR. The City then issued a second Notice of Final Action on the CDP, which superseded the earlier Notice of Final Action (see Exhibit No. 9). The Commission then opened an appeal period, during which time the CDP project was appealed by the Friends of Fort Bragg.

The coastal development permit approved by the City includes numerous conditions and mitigation measures (see Exhibit No. 10). No conditions were attached to the SCR approval. Some conditions relevant to the appeal include a requirement that the development use City water and sewer; that the existing well be used only for landscaping purposes; that a contractor be hired to retrofit 84 residential units now being served by the City's water system which do not have low flow water fixtures; that the applicant demonstrate that he has obtained the necessary amount of water retrofits before the City will approve a building permit or other entitlement necessary to let the motel go into business; and that the project shall be designed such that night lighting is shielded downward and directed away from adjacent properties.

A. Project and Site Description.

The subject site consists of a 53,567-square-foot lot on the west side of Main Street (Highway One) which contains an existing one-story, 11-unit motel called Ocean View Lodging. Nine of the motel units are located at the rear of the parcel (west side) in a structure that extends almost the entire length of the parcel, and two of the units are located in a separate structure along with two garages to the east of the nine-unit structure (see Exhibit No. 4). Also on the property is another structure containing the manager's quarters, laundry, and storage, and a few small outbuildings.

The project as approved by the City consists of the partial demolition of the existing motel and the construction of a new two-story, 30-unit motel, parking, and landscaping. The new units will be located in two structures at the back of the parcel (west side). Some of the existing structures will remain and be modified (see Exhibit No. 3).

There is no sensitive habitat on the subject parcel.

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**B. Adjacent Development.**

Immediately south of the subject site is the recently constructed Surf and Sand Motel, approved by the City in 1988 but not constructed until 1994. The Surf and Sand is two stories high and blocks most of the ocean views; there are narrow view corridors between the buildings on the site, and a narrow view corridor (approximately eight feet wide) between the Surf and Sand and the existing Ocean View Lodging (subject site). The Surf and Sand extends quite close to the Haul Road to the west. Just south of the Surf and Sand is an open public parking lot which provides parking for the Haul Road (as well as providing views). South of the parking lot is the Beachcomber Inn, part of which is two stories in height, and part of which is one-story; there are no ocean views available from Highway One at this site. A coastal development permit for a new addition to the Beachcomber is currently being processed by the City.

To the north of the subject site is the one-story Hi-Seas Motel, which is set back quite a distance from the Haul Road. The existing structure blocks all views of the ocean from Highway One at this site. To the north of the Hi-Seas is an industrially developed site operated by the Baxman Gravel Company; there is another industrial site north of Baxman Gravel. Ocean views are substantially blocked along these parcels.

**C. Project History.**

The City is using a procedural process by which three aspects of the project are separately reviewed and voted upon. The City's process for approval of a CDP consists of approval of the CDP findings, adoption of the Negative Declaration and its findings and conditions, and approval of the SCR findings. On February 26, 1997, the Planning Commission approved the Coastal Development Permit and the Negative Declaration, but denied the Scenic Corridor Review. The City then issued a Notice of Final Action for the CDP, even though final action by the City on the SCR had not yet taken place, and the Notice of Final Action could not describe the conditions and findings the City adopted for the SCR.

The applicant appealed to the City Council the Planning Commission's denial of the Scenic Corridor Review, and the City Council upheld the appeal, reversing the Planning Commission's decision. A new Notice of Final Action was issued by the City, and the Commission opened an appeal period, during which time an appeal of the project was filed by the Friends of Fort Bragg.

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D. Substantial Issue Analysis.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

The Commission finds that a substantial issue exists with regard to the project's conformance with the certified City of Fort Bragg LCP, with respect to the areas of concern raised by the appellants, as discussed below.

1. Appellants' Contentions That Are Not Valid Grounds for Appeal:

Three of the contentions raised in this appeal are not valid grounds for appeal because they are not supported by any allegation that the development is not consistent with the County's certified LCP or with the public access policies of the Coastal Act. These contentions are discussed below.

a. Inadequate Environmental Review.

The appellants contend that the City violated CEQA regulations regarding its review of the project. Among other things, the appellants request a full EIR to be done on the motel's impact on the Noyo River coastal zone.

Discussion: This contention is not a valid ground for appeal. The Commission's appellate jurisdiction is limited to the types of development described in Public Resources Code Section 30603(a) and the grounds described in Section 30603(b). Consequently, on appeal, the Commission considers only whether the appeal raises issues of consistency with the certified Local Coastal Program or the access policies of the Coastal Act. These are not the grounds asserted by the applicant. Thus, the Commission finds that the appellants' above-referenced contention, even if true, does not constitute a valid basis for appeal of the project.

b. Overdrafting of the Noyo River.

The appellants contend that the project contributes to the City's historic, continued, and current overdraft and violation of its fish by-pass flows in the Noyo River coastal zone. The appellants further assert that the City has not developed any policy based on a complete analysis of all its water programs, and water source research programs, for who does or does not receive new connections, when, and under what conditions; that the City has not developed any viable short-term

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solutions to the overdraft of the river; that the City has violated its Noyo River fish by-pass flow permit requirements; and that the City has not developed any viable long term solution to its water problem.

Discussion: This contention is not a valid ground for appeal. As noted above, the Commission's appellate jurisdiction is limited to the types of development described in Public Resources Code Section 30603(a) and the grounds described in Section 30603(b). Consequently, on appeal, the Commission considers only whether the appeal raises issues of consistency with the certified Local Coastal Program or the access policies of the Coastal Act. Whether the City should develop a program to evaluate the water needs of existing development before approving additional development, and whether the overdrafting of the Noyo River should be allowed to continue are not specifically related to policies of the LCP with which the project is not consistent. The appellants have not cited any LCP or Coastal Act public access policies regarding the City's use of water from the Noyo River basin with which the project is not in conformance. Therefore, this contention is not a valid ground for appeal.

c. Protection of Vegetative Resources.

The appellants assert that City planning staff did not review or acknowledge an existing stand of 16- to 25-foot-high trees located on the north side of the subject property, and that it appears from the project plans that the proposed parking and buildings are located where these trees now stand, and that the trees are not shown on the landscaping plans. The appellants conclude that it appears that these trees are to be removed from the site. The appellants assert that a coastal development is required for the removal of these trees, and that these trees should be protected and not removed.

Discussion: This contention is not a valid ground for appeal. As noted above, the Commission's appellate jurisdiction is limited to the types of development described in Public Resources Code Section 30603(a) and the grounds described in Section 30603(b). Consequently, on appeal, the Commission considers whether the appeal raises issues of consistency with the certified Local Coastal Program and the access policies of the Coastal Act. The trees in question are not rare or endangered, nor do they constitute environmentally sensitive habitat. There are no LCP policies regarding the removal of non-sensitive trees, nor do the appellants raise any LCP policies.

The Commission finds the appellants' concerns do not constitute a valid basis for appeal of the project, as they do not address the project's compliance with policies of the LCP.

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2. Appellants' Contentions That Are Related to LCP or Chapter 3 Access Policies (Valid Grounds for Appeal).

The other contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. The Commission finds that these contentions raise a substantial issue.

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

"With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603."

As discussed above, the grounds identified in section 30603 for an appeal of a local government action are limited to whether the action taken by the local government conforms to the standards in the LCP and the public access policies found in the Coastal Act. The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal.Code Regs., tit. 14, section 13115(b).) Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County presents a substantial issue.

a. Procedural Inadequacies.

The appellants contend that the proposed project has been procedurally mishandled by the City to bypass the regulations in its certified LCP. The City acted separately on the Coastal Development Permit (CDP) and Scenic Coastal Review (SCR), approving the CDP before taking final action on the SCR. The appellants assert that the City's practice of treating the SCR independently from the CDP is incorrect and has led to current and past confusion by the public, and ultimately serious violations of the City's LCP policies.

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Discussion: Section XVII(S)(e) of the certified 1985 Amendment to the City's LUP expressly states that the CDP shall not be issued until the SCR has been approved. The City's position is that the CDP has not yet been "issued," merely "approved," and that issuance takes place after approval of the SCR. The City asserts that approval of the SCR is an implied condition of the CDP that must be met before "issuance" of the CDP. However, the CDP was approved without even an express condition stating that the CDP would not be issued until after approval of the SCR.

In addition, under the process the City followed, the City had to make findings for approval of the CDP with regard to the project's consistency with the visual policies of the LCP before the necessary approval of the SCR, which focuses on the conformity of the project with the visual policies of the LCP, had taken place. A process which provides for the SCR to occur after the City adopts findings of consistency of the proposed project with the certified LCP policies regarding visual resources does not enable the results of the SCR to first be considered. The Commission finds that such a sequence of approvals and the County's approval of the CDP without a condition requiring SCR approval raises a substantial issue with the LCP provision that a CDP shall not be issued until the SCR has been approved.

Therefore, the Commission finds that the appeal raises a substantial issue with respect to conformance of the approved project with the LCP.

b. Visual Resources.

The appellants assert that the City is attempting to use development it approved in the past contrary to the Coastal Act and its LCP to justify approving a current development that is not subordinate to the original one-story motel character of the subject area. The appellants further assert that the City has not considered the cumulative impacts of additional two-story motels on the scenic and visual qualities of the entire subject planning area.

The appellants state that the two-story Surf and Sand Motel to the south of the Ocean View was approved in 1988 in violation of the City's LCP and the Coastal Act, as the scenic and visual qualities of the subject area were not protected and the buildings were not subordinate to the character of the area and to the other one-story motels in place at the time. The Surf and Sand was not built until 1996, when its impacts on the visual resources of the area became evident. The appellants further state that the second-story addition to the Beachcomber motel, also south of the Ocean View, was also approved by the City in violation of the City's LCP and the Coastal Act.

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The appellants also assert that the project is located too close to the Haul Road, now owned by State Parks and open to the public as a visitor destination and public access trail. They state that the project will loom over the access, the park, and Highway One. They further assert that the project will destroy the public view from Highway One of the coastal sky.

Discussion: LUP Policy XIV-1 states that new development within the City's coastal zone shall be sited and designed to protect views to and along the ocean, be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section XVII (S) of the Amendment to the City of Fort Bragg Land Use Plan certified by the Commission in 1985 includes Scenic Corridor Review criteria for approval of a project's site plan and drawings. This section states that the structure shall be so designed that it, in general, contributes to the character and image of the City as a place of beauty, spaciousness and balance; that the exterior design and appearance of the structure is not of a quality of scale so as to cause the nature of the neighborhood to materially depreciate in appearance and values; and that the structure is in harmony with proposed adjacent development in the area and the Scenic Corridor Zone and in conformity with the LCP.

Zoning Code Section 18.61.028, Coastal visual resources and special communities, states that permitted development within the coastal scenic corridors shall minimize the alteration of natural landforms, be visually compatible with the character of the surrounding area, be sited and designed to protect views to and along the ocean and scenic coastal areas, and, wherever feasible, restore and enhance visual quality in visually degraded areas.

It is clear that the proposed two-story, 30-unit motel will be larger and higher than the existing one-story, 11-unit motel, and, as such, will result in some change to the coastal viewshed. In addition, the new motel will extend much closer to the Haul Road than does the existing motel, coming to within eight feet under the site layout approved by the City, thereby diminishing, to an extent, the open quality of the view along the ocean as viewed from the Haul Road public accessway. Further, the narrow glimpsed views on either side of the motel will be reduced by the new structure, which will extend all the way to the property boundaries.

The Commission finds therefore that the project as approved raises a substantial issue with regard to the compatibility with the character of the surrounding area and the impact on coastal views from Highway One. The

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Commission thus concludes that the appeal raises a substantial issue with respect to conformance of the approved project with the LCP policies regarding visual and scenic resources.

c. Water Supply.

The appellants assert that a water source for the project's city service connection is not assured. The appellants assert that conditioning the applicant's permit to require low-flow retrofits to existing houses to mitigate for the additional water use caused by the project does not address the question of adequacy of water supply for the project, inconsistent with the City's LCP.

Discussion: LUP Policy XV-1/XV-2 states that all new development constructed in the City Coastal Zone shall be connected to the City water and sewer systems. LUP Policy XV-9 states that the City shall determine, when it receives a Coastal Development Permit application, that adequate potable water is available to service the proposed facility, including during peak service demands.

Zoning Code Section 18.61.022(A) states that all new development in the coastal zone for which water or sewer service is needed shall be connected to the City water and sewer systems, and that existing development in the coastal zone currently utilizing well and/or septic systems that do not meet health standards shall convert to City water and sewer.

Zoning Code Section 18.61.029(A) states that all new development constructed in the City coastal zone shall be connected to the City water and sewer systems as a condition of obtaining a coastal development permit.

The Commission finds that there is no substantial issue with regard to the conformance of the project as approved by the City with the policies of the LCP. Mitigation Measure/Condition No. 1 of the coastal permit requires that the development use City water and sewer, and Mitigation Measure/Condition No. 2 requires that the existing well be used for landscaping purposes only, consistent with the policies of the LCP. Mitigation Measure/Condition No. 23 states that the applicant must hire a contractor to retrofit 84 residential units now being served by the City's water system which do not have low flow water fixtures. Mitigation Measure/Condition No. 25 requires that the applicants demonstrate that they have obtained the necessary amount of water retrofits before the City will approve a building permit or other entitlement necessary to let the motel go into business. Thus the applicants must demonstrate, via completing the required number of retrofits, that they have reduced the amount of water demand within the City by an amount equal to the additional water demand created by his new motel units, consistent with LUP Policy XV-9.

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The Commission thus finds that the appeal raises no substantial issue with respect to conformance of the approved project with the LCP policies regarding water supply.

Conclusion.

The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved project with the visual and scenic resource policies and procedural policies of the LCP.

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PART TWO - DE NOVO ACTION ON APPEAL

For reference, the adopted resolution and conditions precede the proposed revised findings.

I. ADOPTED RESOLUTION OF APPROVAL

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, is in conformance with the certified City of Fort Bragg LCP, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See attached.

III. Special Conditions:

1. Revised Site Plan:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit, for the Executive Director's review and approval, a revised site plan and final project plans that show a redesigned project, including all necessary changes to structures on the site, that incorporates the following changes:

- a. Both proposed new motel structures (Buildings Two and Three) shall be set back from the Haul Road an additional five feet from what is currently proposed on the site plan (see Exhibit No. 3), resulting in a setback of the western walls of the buildings from the Haul Road of at least 13 feet at the south end of the property, and approximately 22 feet at the north end of the property.

The project shall be developed in accordance with the revised plans approved by the Executive Director.

2. Final Drainage and Grading Plans:

PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director, final drainage and grading plans for the project that have been approved by the City of Fort Bragg's engineer that are consistent with the recommendations made by Paoli Engineering, pursuant to the letter dated January 3, 1997. At a minimum, the engineered drainage system of infiltration and trenching shall include the following components:

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1. The grading and drainage plan shall be designed to allow runoff from Building 1 (office and manager's quarters), Building 4 (laundry and storage), and the access driveway to be distributed into the vegetative area east of the parking for Buildings 2 and 3.
2. The runoff from Buildings 2 and 3, and their associated parking lots, shall be directed into the turf areas between these buildings and the old haul road.
3. The turf area mentioned above shall be regraded to allow any runoff to be directed to the drainage way that is parallel to the northerly property line.
4. The existing culvert crossing under the haul road shall be cleaned out and repaired or replaced if necessary.
5. Drainage and maintenance easements shall be obtained from the adjacent owners.

The property shall be developed in accordance with the final plans approved by the Executive Director.

3. Highway Encroachment:

- a) PRIOR TO ISSUANCE of the Coastal Development Permit, the applicant shall submit to both the Executive Director of the Coastal Commission and the City of Fort Bragg Community Development Department signed and approved copies of the necessary Caltrans Encroachment permits.
- b) The project shall be developed in a manner consistent with maintaining a corridor preservation setback of 50 feet from the Highway One centerline.
- c) Prior to completion of the project, the existing northern driveway shall be closed.

4. Prevention of Polluted Runoff:

To minimize polluted runoff from construction operations, the applicant shall take the following steps during construction:

- a) The site shall be watered and equipment shall be cleaned morning and evening;
- b) Soil binders shall be spread on the site, unpaved roads, and parking areas;

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- c) Approved chemical soil-stabilizers shall be applied, according to manufacturers' specifications, to all inactive construction areas (previously graded areas which remain inactive for 96 hours);
- d) Ground cover shall be re-established on the construction site through seeding and watering.

### **5. Water/Sewer Modifications:**

The development shall use City water and sewer services. The existing septic system shall be eliminated, and the existing well will be used for landscaping purposes only. A backflow prevention device shall be installed on the well.

### **6. Water-Saving Measures:**

To minimize water use resulting from the project, the applicant shall implement the following measures:

- a) The applicant shall hire a contractor to retrofit 84 residential units now being served by the City's water system which do not have low flow water fixtures.
- b) The applicant must demonstrate that he has obtained the necessary amount of water retrofits before the motel begins operation. Such proof shall be submitted, in writing, to both the City of Fort Bragg and the Executive Director of the Coastal Commission.
- c) All landscaping shall be drought-tolerant vegetation and irrigated by the existing well on the property.

### **7. Design Restrictions:**

Night lighting, including any lights attached to the outside of the buildings, shall have a directional cast downward.

### **8. Archaeological Monitoring:**

During construction and prior to occupancy, the following shall occur:

- a) Daily monitoring by a qualified archaeologist shall take place, consisting of watching during the entire work day until a depth of excavation has been reached at which resources could not occur. This depth is estimated at about five feet below grade, depending on soil conditions.
- b) Spot checks will consist of partial monitoring of the progress of excavation over the course of the project. During spot checks, all spoils material, open excavations, recently grubbed areas, and other soil disturbances will be inspected. The frequency and duration of

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spot checks will be based on the relative sensitivity of the exposed soils and active work areas. The monitoring archaeologist will determine the relative sensitivity of the parcel.

- c) If prehistoric human interments are encountered within the native soils of the parcel, all work shall cease in the immediate vicinity of the find. The County Coroner, project superintendent, and the Agency Liaison should be contacted immediately, and procedures as prescribed by law should be followed.
- d) If unique archaeological resources other than human burials are encountered, the project should be modified to allow artifacts or features to be left in place, or the archaeological consultant should undertake the recovery of the deposit or feature. Significant cultural deposits are defined as archaeological features or artifacts associated with the prehistoric period, the historic era Mission and Pueblo Periods, and the American era up to about 1900. A representative of the Native American community must be contacted in all cases where prehistoric or historic era Native American resources are involved.
- e) Whenever the monitoring archaeologist suspects that potentially significant cultural remains or human burials have been encountered, the piece of equipment that encounters the suspected deposit will be stopped, and the excavation inspected by the monitoring archaeologist. If the suspected remains prove to be nonsignificant or noncultural in origin, work will recommence immediately. If the suspected remains prove to be part of a significant deposit, all work should be halted in that location until removal has been accomplished. If human remains (burials) are found, the County Coroner must be contacted.
- f) Equipment stoppages will only involve those pieces of equipment that have actually encountered significant or potentially significant deposits, and should not be construed to mean a stoppage of all equipment on the site unless the cultural deposit covers the entire building site. During temporary equipment stoppages brought about to examine suspected remains, the archaeologist should accomplish the necessary task with all due speed.
- g) In the event that unique archaeological resources are unearthed during project construction, the applicant shall cap those resources by adding a protective layer of dirt and then placing the improvement right on top of this protective layer.

9. Public Utilities:

All public utilities shall be installed underground.

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**DON AND HELEN MILLER**  
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10. Other Approvals:

- a) There shall be full compliance with all the requirements of the Fire, Health, Water, Sewer, Building, and Public Works Departments of the City of Fort Bragg.
- b) The City, its officers, agents, and employees may inspect the property at any time and the applicant agrees not to deny or impede access to the subject property for the City.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

1. Project and Site Description:

The subject site consists of a 53,567-square-foot lot (1.2 acres) on the west side of Main Street (Highway One) which contains an existing one-story, 11-unit motel called Ocean View Lodging. Nine of the motel units are located at the rear of the parcel (west side) in a structure that extends almost the entire length of the parcel, and two of the units are located in a separate structure along with two garages to the east of the nine-unit structure (see Exhibit No. 4). Also on the property is another structure containing the manager's quarters, laundry, and storage, and a few small outbuildings. The old logging haul road, now owned and operated by State Parks as a public pedestrian and bicycle path, is located immediately adjacent and to the west of the subject site.

The proposed project consists of the partial demolition of the existing motel and the construction of a new two-story, 25-foot-high, 30-unit motel with parking and landscaping. The new units will be located in two structures at the back of the parcel (west side). Some of the existing structures will remain and be modified (see Exhibit No. 3).

There are a number of existing trees on the site which are not proposed for removal. No sensitive habitat has been identified on the subject parcel.

2. Adjacent Development:

The subject site is one of five lots at the north end of Fort Bragg that are designated highway-visitor serving commercial. Four of these lots, including the subject site, are developed with motels. Ocean views from Highway One are substantially blocked along these parcels. Immediately south of the subject site is the recently constructed Surf and Sand Motel, approved by the City in 1988 but not constructed until 1994. The Surf and Sand is two stories high and blocks most of the ocean views from Highway One; there are narrow glimpsed

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views available between the buildings on the site, and a narrow glimpsed view (approximately nine feet wide) available between the Surf and Sand and the existing Ocean View Lodging (subject site). The Surf and Sand extends quite close to the Haul Road to the west. Just south of the Surf and Sand is an open public parking lot owned by State Parks which provides parking for the Haul Road (as well as providing views). South of the parking lot is the Beachcomber Inn, part of which is two stories in height, and part of which is one-story; there are no ocean views available from Highway One at this site. A coastal development permit for a new addition to the Beachcomber is currently being processed by the City.

To the north of the subject site is the one-story Hi-Seas Motel, which is set back quite a distance from the Haul Road. The existing structure blocks all views of the ocean from Highway One at this site. To the north of the Hi-Seas is an industrially developed site operated by the Baxman Gravel Company; there is another industrial site north of Baxman Gravel. Ocean views from Highway One are substantially blocked along these parcels.

3. Visitor Serving Facilities:

LUP Policy IV-1 states that the City shall provide for and encourage additional visitor serving commercial facilities by maintaining existing areas designated for highway-visitor serving commercial; allowing visitor serving uses within all commercial land use designations; and maintaining the "highway-visitor serving commercial" land use designation as one allowing primarily recreational and visitor serving uses.

The subject site is designated highway-visitor serving commercial, and currently supports a nine-unit motel, which is a principally permitted use in this designation, pursuant to Zoning Code Section 18.29.100. The proposed project is an expansion of the motel, consistent with the designation. The proposed project, therefore, is consistent with LUP Policy IV-1 and Zoning Code Section 18.29.100, as the site will continue to support a visitor serving use.

4. Visual Resources:

LUP Policy XIV-1 states that new development within the City's coastal zone shall be sited and designed to protect views to and along the ocean, be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section XVII (S) of the Amendment to the City of Fort Bragg Land Use Plan certified by the Commission in 1985 includes Scenic Corridor Review criteria for approval of a project's site plan and drawings. This section states that

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the structure shall be so designed that it, in general, contributes to the character and image of the City as a place of beauty, spaciousness and balance; that the exterior design and appearance of the structure is not of a quality of scale so as to cause the nature of the neighborhood to materially depreciate in appearance and values; and that the structure is in harmony with proposed adjacent development in the area and the Scenic Corridor Zone and in conformity with the LCP.

Zoning Code Section 18.61.028, Coastal visual resources and special communities, states that permitted development within the coastal scenic corridors shall minimize the alteration of natural landforms, be visually compatible with the character of the surrounding area, be sited and designed to protect views to and along the ocean and scenic coastal areas, and, wherever feasible, restore and enhance visual quality in visually degraded areas.

The existing structures of the one-story, nine-unit motel block all views of the ocean, except for a narrow, glimpsed view available at the south end of the property, where there is a 9'6" gap between the existing Ocean View Lodge and the adjacent Surf and Sand Motel. This gap between motels will be reduced to approximately 3 feet by the proposed new 30-unit, two-story motel units. According to the applicant, the glimpsed view was previously blocked by trees which were removed during construction of the recently built Surf and Sand on the adjacent property, and trees have been planted to replace these removed trees. Once the new trees have obtained full growth, the existing narrow gap between the motels will once again be blocked by trees. At the north end of the property, views through the gap between the Ocean View Lodge and the adjacent Hi-Seas Motel are almost entirely blocked by existing trees, which will remain in place.

It is clear that the proposed two-story, 30-unit motel will be larger and higher than the existing one-story, 11-unit motel, and, as such, will result in some change to the coastal viewshed. However, the existing motel, which extends almost the entire length of the parcel, already blocks nearly all views of the ocean, except for narrow glimpsed views on either side of the motel and through openings in the building. There is no evidence that the new motel will have a significantly greater impact on the coastal viewshed. The narrow glimpsed views on either side of the motel will be reduced by the new structure, which will extend all the way to the property boundaries, but there will be a narrow view corridor between the two new motel structures which will provide for a glimpsed view somewhat comparable to what exists now. Furthermore, a large view corridor exists two lots to the south, where the public parking lot owned by State Parks provides parking and access for the Haul Road.

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Although the proposed development will not have a significantly greater impact on views through the site from Highway One, it will have a visual impact on the public using the Haul Road to the west as it will extend quite a bit closer to the Haul Road than does the existing motel. The existing one-story, nine-unit motel, which is located in the Scenic Corridor Combining Zone, is approximately 12 feet in height, set back 40 feet from the Haul Road at the south end of the property, and set back approximately 60 feet from the Haul Road at the north end. The proposed new motel is 30 units, 25 feet high and two stories, set back approximately 8 feet from the Haul Road at the south end of the property, and approximately 17 feet from the Haul Road at the north end of the property.

To reduce visual impacts of the proposed new development on public users of the Haul Road, the Commission thus attaches Special Condition No. 1, requiring the motel units to be set back an additional five feet from the Haul Road than the proposed project is currently set back, such that the units will be set back from the Haul Road a total of at least 13 feet at the south end and approximately 22 feet at the north end. To accommodate this relocation, the middle building, which now contains two motel units but will be used for laundry and storage, will have to be modified and shortened by five feet. The Commission considered requiring that the motel units be relocated even closer to Highway One, with a greater setback from the Haul Road, but that would adversely affect views from Highway One and would also necessitate removal of the existing middle building, which is intended to remain as part of the proposed plan.

Pursuant to Section XVII(S) of the 1985 LUP Amendment, new structures in the Scenic Corridor Combining Zone must be designed to contribute to the character and image of the City as a place of beauty, spaciousness and balance, and must be in harmony with adjacent development in the area. The proposed 30-unit motel will be in character with surrounding development, as it will be comparable in bulk and height to the adjacent two-story Surf and Sand Motel directly south, and the Beachcomber Inn three lots to the south. In addition, the proposed new development will be more attractive than the existing motel on the site, which is becoming decrepit; the new project includes considerable landscaping of trees and shrubs, as well as posted arches on the walkways with hanging flowers and potted shrubs and flowers. As such, the proposed new development will improve the visual character of the site, consistent with the visual policies of the LCP.

To further minimize visual impacts, the Commission attaches Special Condition No. 7, which requires that night lighting, including any lights attached to the outside of the buildings, shall have a directional cast downward; Special Condition No. 9, which requires that all public utilities shall be installed underground; and Special Condition No. 3, which requires that a corridor

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preservation setback of 50 feet from the Highway One centerline shall be implemented, and that the northern driveway shall be closed.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with LUP Policy XIV-1, Section XVII (S) of the 1985 LUP Amendment, and Zoning Code Section 18.61.028, as the project will be visually compatible with the character of the surrounding area, will not have any significant adverse impacts on visual resources, and will improve the visual character of the site.

5. Public Access:

Projects located within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section III of the City of Fort Bragg's LUP and Zoning Code Section 18.61.021 contain a number of policies regarding standards for providing and maintaining public access.

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to offset a project's adverse impact on existing or potential public access.

The subject site, while located west of the first public road, is not an oceanfront or blufftop parcel and is not used by the public to reach the sea. Thus, the proposed project will not obstruct any existing access to the sea and the minor increase in land use intensity associated with construction of additional motel units will not create a significant demand for new access facilities or burden existing access in the area. The new demand created can be adequately handled by the adjacent public Haul Road and other nearby blufftop and shoreline access.

However, the proposed project would adversely affect use of the immediately adjacent Haul Road, owned and operated by State Parks as a public access path. The existing motel is set back from the Haul Road approximately 40 feet at the south end, and approximately 60 feet at the north end. The proposed new motel units would be set back from the Haul Road approximately 8 feet at the south end, and approximately 17 feet at the north end. As stated above, this proximity to the public access path would have adverse impacts on public users of the Haul Road, such as reducing the sense of open space and sunlight, and creating a sense of intrusion that might reduce the public's enjoyment of the access path. To address this concern, the Commission attaches Special

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Condition No. 1, requiring that the new motel units be set back from the Haul Road an additional five feet, to reduce the impacts of the new development on users of the public access path. As noted above, five feet is the maximum additional setback possible without requiring removal of existing structures.

The Commission therefore finds that, as conditioned, the proposed project, which does not include any provision of new public access, is consistent with the public access policies of the Coastal Act and the City's Local Coastal Program.

### 6. New Development/Water Resources:

LUP Policy XV-8 states that all new development within the coastal zone shall be connected to the City water and sewer systems. LUP Policy XV-9 states that the City shall determine, when it receives a Coastal Development Permit application, that adequate potable water is available to service the proposed facility, including during peak service demands.

Zoning Code Section 18.61.022 states that the quality and quantity of groundwater resources shall be maintained and where feasible restored through control of wastewater discharge and entrainment, runoff controls, and prevention of groundwater depletion enforced through specific methods, including requiring new development in the coastal zone for which water or sewer service is needed to be connected to the City water or sewer systems, and requiring that existing development in the coastal zone currently utilizing well and/or septic systems that do not meet health standards to convert to City water and sewer.

Zoning Code Section 18.61.029(A) states that all new development constructed in the City coastal zone shall be connected to the City water and sewer systems as a condition of obtaining a coastal development permit.

To address these policies, the City had attached several special conditions to its approval for the project, which the Commission finds appropriate. The Commission thus attaches Special Condition No. 5, which requires that the new development use City water and sewer, that the existing septic system be eliminated, and that the existing well be used for landscaping purposes only, with a backflow prevention device installed on the well.

The Commission also attaches Special Condition No. 6, which requires that the applicant hire a contractor to retrofit 84 residential units now being served by the City's water system which do not have low flow water fixtures, and that the applicant demonstrate that he has obtained the necessary amount of water retrofits before the motel can go into operation. Thus the applicant will

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have to demonstrate, via completing the required number of retrofits, that he has reduced the amount of water demand within the City by an amount equal to the additional water demand created by his new motel units, consistent with LUP Policy XV-9. This retrofit program has been in place in the City of Fort Bragg for several years. Special Condition No. 6 also requires that all landscaping shall be drought-tolerant vegetation and irrigated by the existing well on the property.

The Commission therefore finds that the proposed development, as conditioned, is consistent with LUP Policy XV-8 and XV-9, and Zoning Code Sections 18.61.022(A) and 18.61.029(A), as water use resulting from the project will be minimized.

### **7. Runoff, Erosion, and Surface Grading:**

LUP Policy VI-4 states that changes in runoff patterns which result from new development shall not cause increases in soil erosion and may be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided.

In addition, Zoning Code Section 18.61.022.(B)(1) states that runoff shall be controlled in new developments such that biological productivity and quality of coastal waters, marine resources, and riparian habitats is protected, maintained, and, where appropriate, restored. New development shall not cause increases in soil erosion nor disturb wetland or riparian habitats. Section 18.61.022.(B)(4)(e) states that drainage provisions shall accommodate increased runoff resulting from modified soil and surface conditions during and after development or disturbance.

To address these concerns, the City had attached several conditions to its approval for the project, which the Commission finds appropriate. The Commission thus attaches Special Condition No. 2, which requires submittal of final drainage and grading plans, and Special Condition No. 4, which requires measures to minimize polluted runoff from construction activity, such as watering the site and cleaning construction equipment, spreading soil binders on the site, unpaved roads, and parking areas, etc.

The Commission thus finds that the proposed project, as conditioned, is consistent with LUP Policy VI-4 and with Zoning Code Section 18.61.022, as measures shall be taken to control runoff and drainage and to minimize construction impacts.

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### 8. Archaeological Resources:

LUP Policy XIII-2 states that when in the course of grading, digging, or any other development process, evidence of archaeological artifacts is discovered, all work which could damage or destroy such resources shall cease and City Planning Staff shall be notified immediately of the discovery. City Planning Staff shall notify the State Historic Preservation Officer and the Sonoma State University Cultural Resources Facility of the find. At the request of the State Historic Preservation Officer, development of the site may be halted until an archaeological assessment of the site can be made and mitigation measures developed.

Section 18.61.027.(B) of the Zoning Code states that where development will adversely affect archaeological or paleontological resources, the City shall require reasonable mitigation measures, and that when in the course of grading, digging or any other development process, evidence of archaeological artifacts is discovered, all work which could damage or destroy such resources shall cease.

The cultural resources evaluation done for the site by Archaeological Resource Service indicates that given what has been noted in other studies about the aboriginal and historic Indian occupation of the north Pudding Creek vicinity and the presence of the historic Mendocino Indian Reservation in the same general area, there seems to be a high probability that some signs of Native American usage will be visible within or adjacent to the Ocean View Lodge property. An investigation was made, and no surface evidence was encountered of aboriginal activity. However, the archaeologist who did the evaluation made a number of recommendations regarding monitoring procedures and measures to be taken if any archaeological resources are found on the subject site. The City had incorporated these recommendations into the special conditions it attached to its coastal permit, and the Commission finds these conditions to be appropriate. The Commission therefore attaches Special Condition No. 8, which incorporates these recommendations.

### 9. Public Works:

Policy XV-5 states that the City shall work with the State Department of Transportation (Caltrans) to develop improved highway access standards, which shall include parking area stacking lanes; the number and placement of driveways in relation to intersections and turning lanes; on-street parking; access visibility; and curb, gutter, sidewalk and landscaping requirements. Caltrans requires a 50-foot Highway One setback for the proposed project, and requires that the existing northern driveway be closed.

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To address these concerns, the City had attached several special conditions to the permit for the project, which the Commission finds appropriate, as they provide for access improvements called for by Policy XV-5. The Commission therefore attaches Special Condition No. 3, which requires that the applicant submit approved copies of the necessary Caltrans Encroachment permits, that a 50-foot setback be implemented from the Highway One centerline, and that the northern driveway be closed.

The City had also initially attached a special condition to their approval requiring the applicant to construct a left-turn lane to Caltrans' standards prior to occupancy of the site. This condition is not attached to the Commission's approval of the project for the following reasons: (1) Caltrans did not directly require a left-turn lane due to the size of the proposed development; (2) although the City had previously required the left-turn lane, during Commission staff review the City wrote to the Commission (see Exhibit No. 14) indicating that as the City is now aware that Caltrans does not feel the left-turn lane is required, the City is requesting that rather than require the applicant to construct a left-turn lane, the applicant should be required to deposit funds to cover the cost of the left-turn lane for his frontage at such time as those improvements are required by Caltrans and the City; (3) although LUP Policy XV-5 states that the City shall work with Caltrans to develop improved highway access standards, there is no LCP policy that specifically requires a left-turn lane; (4) safety records do not show a particular problem on the stretch of Highway One in which the subject project is located, and an analysis of traffic accident data for that stretch of Highway One shows a low accident rate, and no specific correctable accident pattern attributable to motel access; and (5) no evidence has been provided that traffic delays would be created by the proposed development that would adversely affect public access.

### 10. Environmentally Sensitive Habitat Areas:

LUP Policy IX-1 and Zoning Code Section 18.61.025 state that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas; development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

A botanical survey done for the subject site indicates that nine plants of concern are known to occur on the coastal terrace prairie in the Fort Bragg area. Seven of these were in bloom at the time of the botanical survey, and none of these seven were located on the property at the time of the search. The other two, the Point Reyes blennosperma and the Roderick's fritillary,

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**DON AND HELEN MILLER**  
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were not blooming at the time of the search, and so their presence or absence could not be confirmed. The botanist did indicate that since the entire site was developed, the possibility of any such specimens occurring on the site was extremely low. Furthermore, these plants, if they exist on the property, would be found in the northwest portion of the parcel where no new development is proposed. The Commission thus finds that the proposed project will have no impacts on environmentally sensitive habitat, and is therefore consistent with LUP Policy IX-1 and Zoning Code Section 18.61.025.

11. California Environmental Quality Act (CEQA).

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

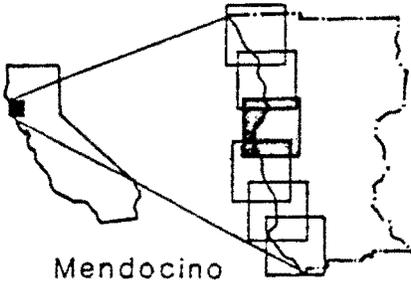
The proposed project has been conditioned in order to be found consistent with the policies of the City of Fort Bragg LCP and the public access and recreation policies of the Coastal Act. Mitigation measures, including requirements that (1) the development be set back farther from the adjacent Haul Road; (2) final drainage and grading plans be submitted; (3) a corridor preservation setback of 50 feet from the Highway One centerline be implemented; (4) measures be taken during construction to minimize impacts including polluted runoff; (5) the development use City water and sewer, the existing septic system be eliminated, and the existing well be used for landscaping purposes only; (6) the applicant hire a contractor to retrofit 84 residential units now being served by the City's water system which do not have low flow water fixtures, and all landscaping be drought-tolerant vegetation and irrigated by the existing well on the property; (7) night lighting have a directional cast downward; (8) archaeological monitoring take place during construction; and (9) all public utilities be installed underground, will minimize all adverse environmental impacts.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

## ATTACHMENT A

### Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



Mendocino

**EXHIBIT NO. 1**

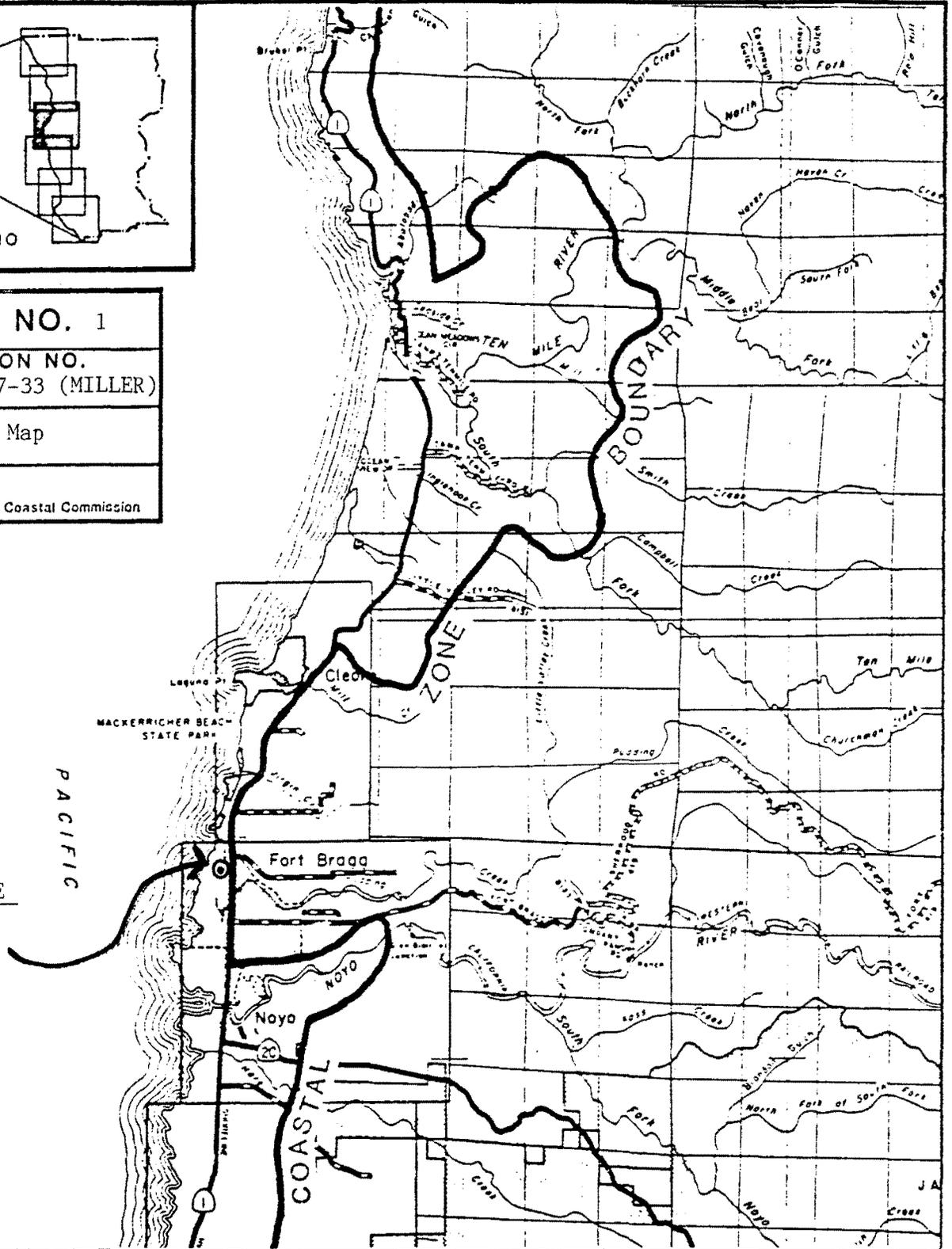
**APPLICATION NO.**

A-1-FTB-97-33 (MILLER)

Location Map



California Coastal Commission



APPROXIMATE  
LOCATION



California Coastal Commission

**LOCATION MAP**



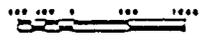
PROJECT  
LOCATION

OCEAN

PACIFIC

17

CURRENT CITY LIMITS  
IMPROVEMENT DISTRICT  
BOUNDARY  
INDICATED BY DASHED LINE



# CITY OF FORT BRAGG

EXHIBIT NO.	2
APPLICATION NO.	A-1-FTB-97-33
MILLER	
Vicinity Map	

Highway

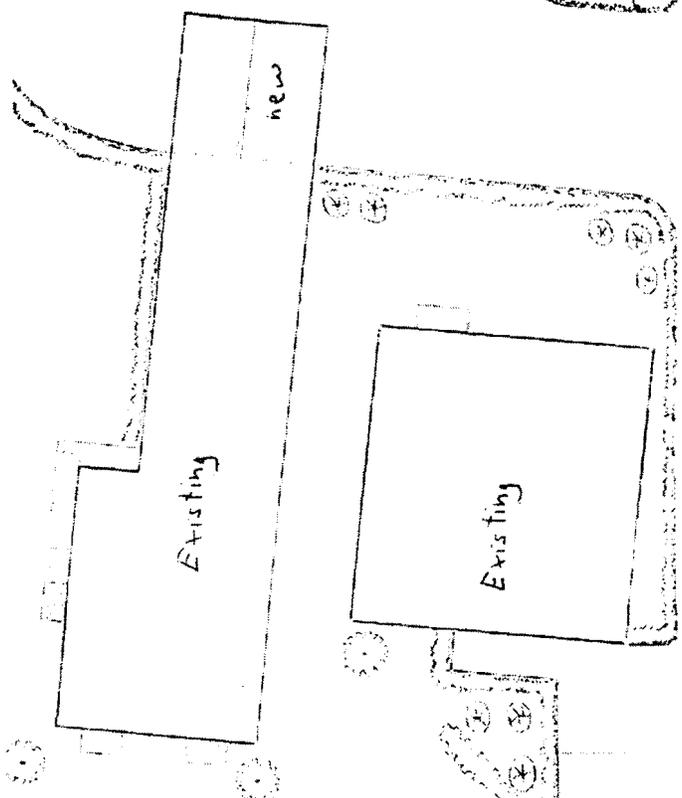
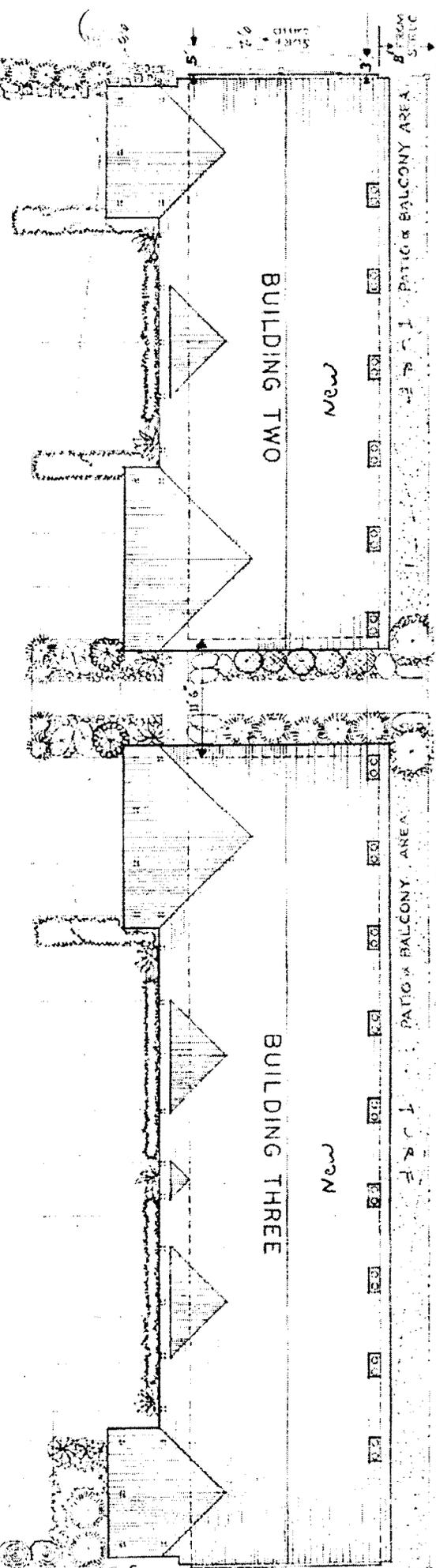


EXHIBIT NO.	3
APPLICATION NO.	A-1-FTB-97-33
MILLER	
Proposed Site Plan	



Scale 1/8" = 1'-0"

PATIO & BALCONY AREA

PATIO & BALCONY AREA

**A** Ocean View Lodging  
 1141 North Main St.  
 Fort Bragg, CA 95437

EXISTING  
 STRUCTURES

APPROX. SCALE  
 32' = 1"

⊕ HEIGHT AT  
 THIS POINT

VIEW CORRIDOR  
 NORTH SURF & SAND  
 SOUTH OCEAN VIEW  
 9'6"

EXISTING  
 STRUCTURES OF  
 SURF & SAND

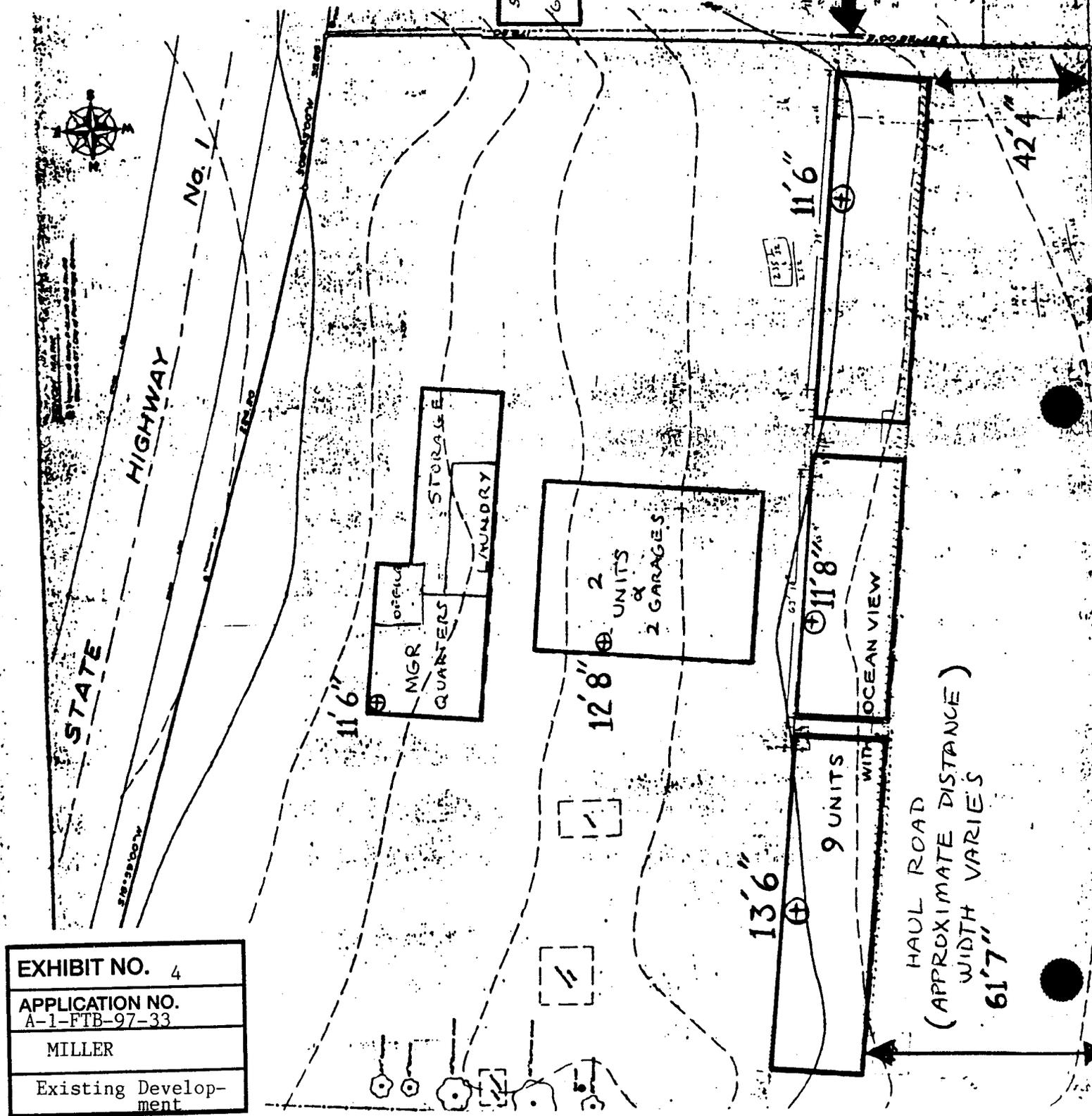


EXHIBIT NO. 4
APPLICATION NO. A-1-FTB-97-33
MILLER
Existing Development

16'-0"

DECK

CHAIR

TABLE

CHAIR

TABLE

TV

QUEEN SIZE BED

CHAIR

TABLE

SH. & POLE

OCEAN VIEW MOTEL

FORT BRAGG, CA.

FOR

DON MILLER

32-

CHAIR

TABLE

FIRST FLOOR PLAN

SCALE 1/4" = 1'-0"

QUEEN SIZE BED

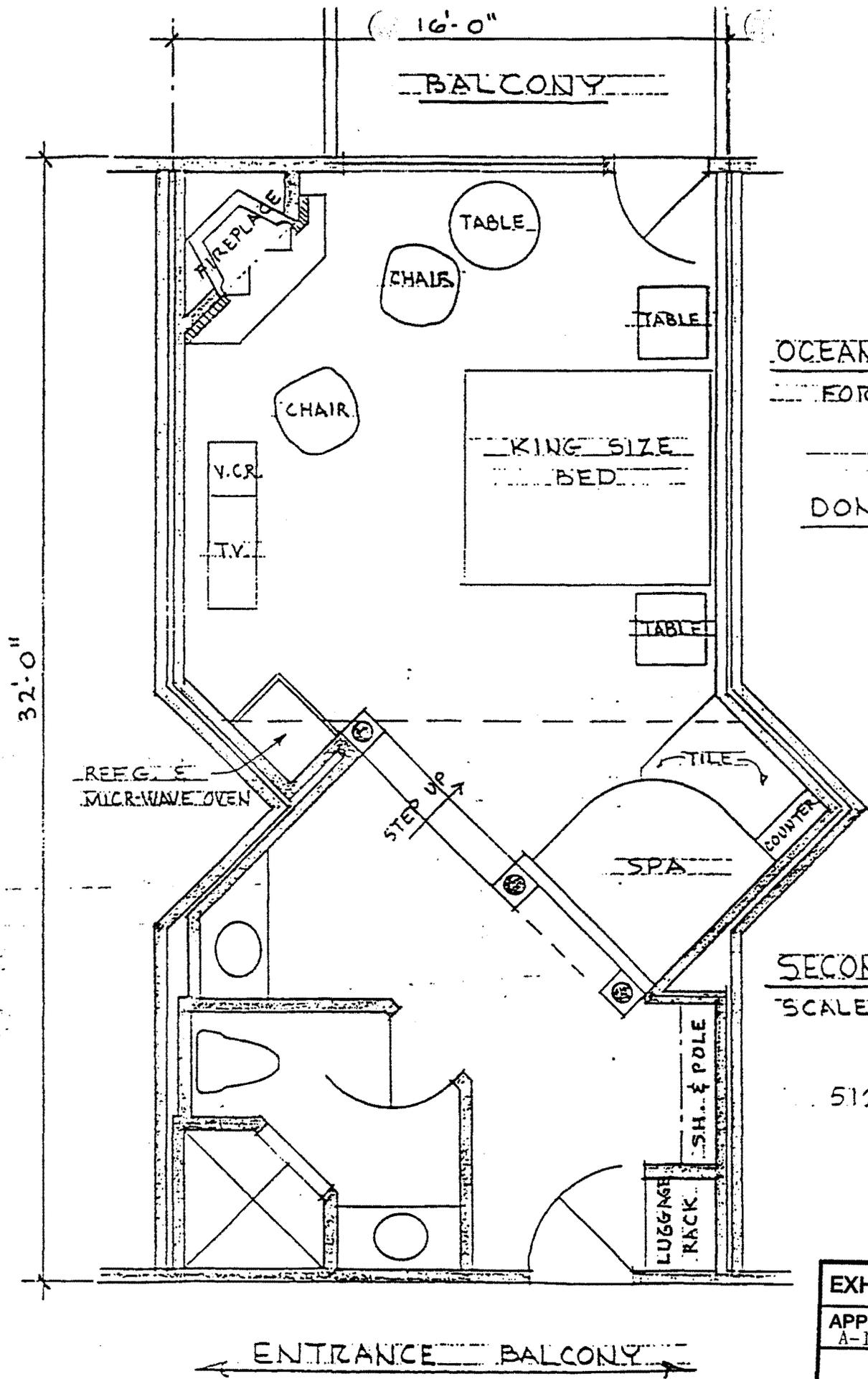
512 SQ. FT.

TABLE

SH. & POLE

EXHIBIT NO.	5
APPLICATION NO.	A-1-FTB-97-33
MILLER	
Floor Plans	

WALK



OCEAN VIEW MOTEL  
FORT BRAGG, CA.  
FOT  
DON MILLER

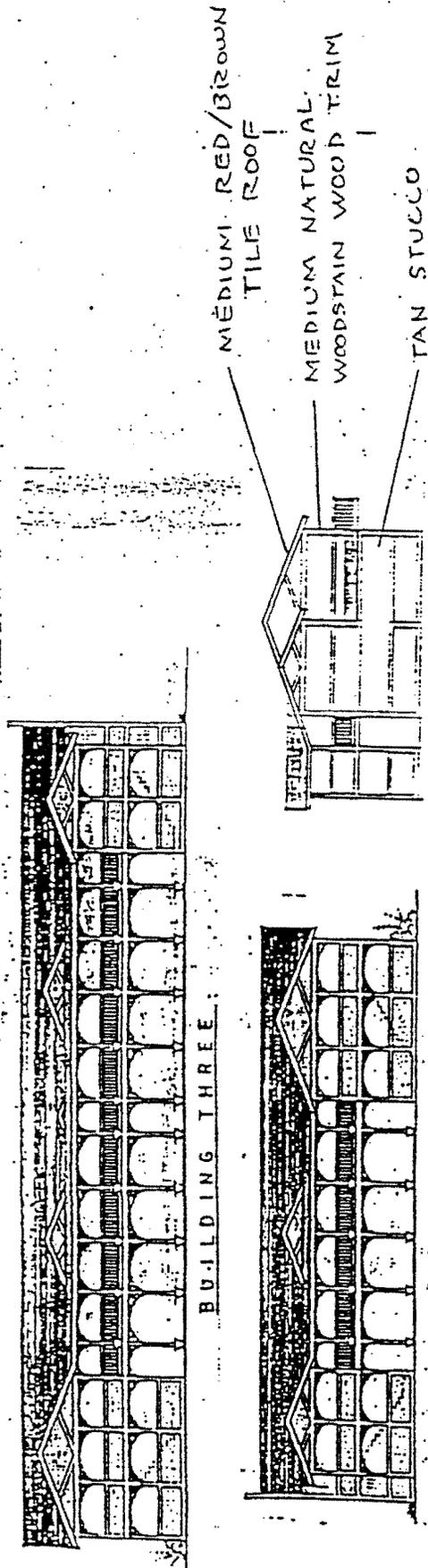
SECOND FLOOR PLAN  
SCALE 1/4" = 1'-0"

512 SQ. FT.

EXHIBIT NO.	6
APPLICATION NO.	A-1-FTB-97-33
MILLER	
Floor Plans	

Ocean View Lodging  
1141 North Main St.  
Fort Bragg, CA 95437

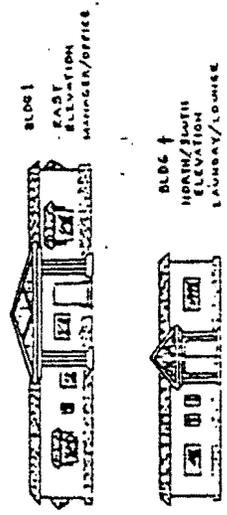
EXHIBIT NO. 7
APPLICATION NO. A-1-FTB-97-33
MILLER
Elevation Plans



EAST ELEVATION 1

APPROX. SCALE  
1/32" = 1'

BLDG 1 & 4  
EXISTING / MODIFIED



CALIFORNIA COASTAL COMMISSION  
NORTH COAST AREA  
45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
(415) 904-5260

CALIFORNIA  
COASTAL COMMISSION



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

FRIENDS OF FORT BRAGG; ROANNE WITHERS + DON GUENTHER  
P.O. BOX 198  
FORT BRAGG, CA 95437 (707) 961-1953  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF FORT BRAGG

2. Brief description of development being appealed: DEMOLITION OF EXISTING 11 UNIT MOTEL + CONSTRUCTION OF A NEW TWO-STORY 30 UNIT MOTEL, PARKING + LANDSCAPING

3. Development's location (street address, assessor's parcel no., cross street, etc.): 1141 NORTH MAIN ST., FORT BRAGG, CA 95437  
AP# 69-241-31

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: CDP-SCR (10-96)
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-FTB-97-033

DATE FILED: \_\_\_\_\_

DISTRICT: N.C.

H5: 4/88

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5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator
- b.  City Council/Board of Supervisors
- c.  Planning Commission
- d.  Other \_\_\_\_\_

6. Date of local government's decision: PLANNING COMMISSION 2-26-97  
CITY COUNCIL 4-14-97

7. Local government's file number (if any): CDP/SCR 10-96

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:  
DON & Helen Miller  
632 N. MAIN ST.  
FORT BRAGG, CA 95437

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) SEE ATTACHMENT IV.
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

- 1) CITY COASTAL DEVELOPMENT APPROVAL PROCESS INCONSISTENT WITH LCP-LUP, COASTAL ACT, & CEQA.
- 2) SUBSTANTIVE INCONSISTENCY WITH LCP-LUP COASTAL & VISUAL RESOURCE PROTECTION POLICIES.
- 3) SUBSTANTIVE INCONSISTENCY WITH LCP-LUP COASTAL VEGETATION PROTECTION POLICIES.
- 4) SUBSTANTIVE INCONSISTENCY WITH LCP-LUP WATER SUPPLY AVAILABILITY & IMPACTS ON PROTECTED COASTAL RESOURCE POLICIES. SEE ATTACHMENT TO IV.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my our knowledge.

*Rianne Withers*  
*Renee L. Hunt*

Signature of Appellant(s) or Authorized Agent

NOTE: FAXED 4-27-97

*(P)*

Date 4-26-97

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date

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**ATTACHMENT TO APPEAL SECTION IV.**

Friends of Fort Bragg  
Roanne Withers  
Ron Guenther  
P.O.198  
Fort Bragg, CA 95437  
961-1953

April 26, 1997

California Coastal Commission  
North Coast Area  
45 Fremont, Suite 2000  
San Francisco, CA 94105-2219

By Fax April 26, 1997: (415) 904-5400  
Hard Copy by Mail: April 27, 1996

Attention: Jo Ginsberg

**RE:** Appeal from Coastal Permit Decisions (CDP 10-96 and SCR 10-96 -Oceanview Lodge/Miller) by the Fort Bragg Planning Commission February 26, 1997, and Fort Bragg City Council April 14, 1997.

Members of the Commission,

We have met all the conditions for appeal to the Coastal Commission as stated below.

**Time Frame:**This Appeal and attachment filed by FAX on April 27, 1997 is timely per the City of Fort Bragg Notice of Final Determination mailed to the Coastal Commission on April 17, 1997.

**Jurisdiction:**This Appeal is within the Commission's jurisdiction since the subject property is located west of Highway 1.

**Eligibility to Appeal:**Friends of Fort Bragg has submitted both oral and written testimony about our concerns at every public hearing regarding the subject property.

**Grounds for Appeal:** The City of Fort Bragg Planning Commission and Council approval of the subject Coastal Development Permit along with the CDP's Scenic Corridor Review Permit is in procedural and substantive violation of the City's certified Local Coastal Plan, its related Municipal Code Zoning Ordinances, the Coastal Act of 1976, and the California Environmental Quality Act.

**Subject of Appeal:** City of Fort Bragg procedure for Coastal Development Permit approval, impact on protected highly scenic area and Noyo River coastal resources, unknown potable water supply for the development proposal, lack of protection for major vegetative resources - a beautiful grove of older trees.

**Appellant Notification of Appeal:** All interested parties as noticed by the City of Fort Bragg on its Notice of Final Determination, including the City of Fort Bragg itself, all listed at the end of this Appeal were sent copies of the Appeal and attachments by mail on April 27, 1996.

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**CITY PROCEDURE FOR APPROVAL OF A DEVELOPMENT PROPOSAL LOCATED IN THE COASTAL ZONE**

The City of Fort Bragg is misusing its Scenic Corridor Review Use Permit (SCR) and related Zoning Codes in order to by-pass and/or supersede Coastal Development Permit and California Environmental Quality Act regulations, codes, statutes, and/or provisions contained in its Coastal Zone Municipal Zoning Code, its Local Coastal Program/Land-Use Plan (LCP-LUP), the Coastal Act, and the California Environmental Quality Act (CEQA).

The following is the City's basis, and process for issuance and appeal of a Scenic Corridor Review Permit.

If a proposed development located in the City's Coastal Zone/Combining Zone (Municipal Code, Ch. 18.61), has a Highway & Visitor Service Commercial Zone designation (Municipal Code, Ch.18.26), and a Scenic Corridor Combining Zone designation (Municipal Code, Ch. 18.58) two separate use permits with separate fees are required; one for the Coastal Development Permit (CDP) and one for a Scenic Corridor Review Permit (SCR). The "project" is also subject to environmental review under CEQA. Both of these use permits, as regulated in their respective Municipal Code sections, have separate regulations, findings, conditions for approval, and appeal processes. Also, the "project's" environment impact review has its own determination (exempt, Negative Declaration, or Environmental Impact Report), set of findings, conditions for approval, and environmental impact mitigation measures.

The City has determined that three separate sets of decision procedures (CDP, SCR, and CEQA) must be approved before a Coastal Development Permit will be issued. The City's standard for a "motion to approve" a CDP includes approval of the CDP Findings, the adoption of the Negative Declaration and its Findings, Mitigation Measures/Conditions, and approval of the SCR Findings. However, the City allows for a single motion or separate motions by a Planning Commissioner which could include any approval/denial combination of three separate decision procedures with only the caveat that the CDP will not issue without an approval of each decision process. On appeal, the appellant conceivably has the ability to appeal any one or combination of the three decisions. In the case of an appeal of the SCR only then the CEQA Negative

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Declaration and CDP decisions are not allowed to be considered by the City Council, with the CDP not issuing unless the SCR is approved.

In the case of a "SCR and its findings only appeal", the City's practice of treating it independently from the CDP and CEQA is incorrect and has led to current and past confusion by the public, and ultimately serious violations of the City's LCP policies and CEQA.

The first flaw in the City's rationale for its practice of allowing a "SCR and its findings only appeal", is the City's misinterpretation of the CEQA "project" definition. CEQA Guidelines, Section 21065, states, " 'Project' means the following:...(c) Activities involving the the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." CEQA Guideline Section 15378 further defines "project" as "(a) the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, and...(c) The term 'project' refers to an activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term 'project' does not mean each separate government approval..., and (d) Where the Lead Agency could describe the project as...a development proposal which will be subject to several governmental approvals...the Lead Agency shall describe the project as the **development proposal** for the purpose of environmental analysis..."(Emphasis added.)

The City's Scenic Corridor Review Permit process is a part of a "whole project" or "development proposal" as defined by the CEQA Guidelines, (as is the Coastal Development Permit) therefore the SCR (and the CDP) as parts of the "development proposal" require environmental evaluation per CEQA Guidelines. While the City can make specific separate "findings" for SCR approval and for CDP approval, and each of these "findings" approval decisions can be separately appealed (according to City use permit Municipal Codes), the appeal hearing cannot be conducted absent from or in contradiction to environmental evaluation conducted for the "whole" development proposal by the City.

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The City's "SCR and its findings only appeal" process, whereby "environmental impact concerns" expressly may not be heard or considered by the City Council unless the entire "Negative Declaration" is also specifically appealed, prevents the City Council from making a fully informed and publicly disclosed decision to "override" environmental considerations, and/or create new environmental impacts not considered in the project's Negative Declaration. This particular process used by the City is in opposition to the intent and provisions of CEQA. The process with which to cure such a procedure violation is explained in Public Resources Code, Section 21003, subd. (a) whereby CEQA procedures and other procedures should run concurrently rather than consecutively.

The second fundamental flaw in the City's process of allowing a "SCR and its findings only appeal" has encouraged the City to treat the SCR independent from and superseding the City's LCP and the Coastal Act.

The subject Miller/Oceanview Lodge is located within the Coastal Zone/Combining Zone, within the City's Scenic Corridor Zone, and in between Highway 1 to its east, and Mackerricher State Park, park Haul Road, and the ocean to its west. The City LCP Policy XIV-5 states, "All newly annexed areas shall be included in the City's Scenic Corridor Design Review System." This Scenic Corridor Design Review system is codified in the City's Municipal Code, Ch. 18.58 which sets forth regulations, review process, criteria, and appeal process for the City issuance of a Scenic Corridor Review Permit. Therefore, a Coastal Development Permit together with a Scenic Corridor Review Permit are both required for the Oceanview Lodge development proposal.

Throughout the Planning Commission hearings about the development proposal, the primary concern of the public, as expressed in its testimony along with the majority of Planning Commissioners eventually voting to not approve the Scenic Corridor Review Permit, was the impact on coastal visual and scenic resources of the proposed project's large rectangular block design, height, and build-out location abutting the Mackerricher State Park and park Haul Road. On February 26, 1997, the Planning Commission voted to approve the Coastal Development Permit Findings, (and the Negative Declaration Findings, Mitigation Measures, and Conditions) for this development proposal. However,

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the Planning Commission did not approve the Scenic Corridor Review Permit for the following reasons as stated in its "Scenic Corridor Review Findings":

- "1) The structure is so designed that it, in general, does not contribute to the character and image of the City as a place of beauty, spaciousness, and balance.
- 2) The exterior design and appearance of the structure is of a quality or scale so as to cause the nature of the neighborhood to materially depreciate in appearance and value.
- 3) The structure is not in harmony with proposed adjacent development in the area and the Scenic Corridor Zone and is not in conformity with the General Plan of the City."

The development proposal applicant subsequently appealed the Planning Commission's denial of the project's Scenic Corridor Review Permit. The City Planner apparently determined that since the CDP and its coastal zone purview had been approved by the Planning Commission, the only discussion necessary, and the only consideration necessary by the City Council about the SCR was its conformance with non-Coastal Zone regulations. The City Planner's strong recommendation to the Council was to reverse the Planning Commission's decision based on City Municipal Code, Section 18.58.030 which states, "The purpose of plan review within the Scenic Corridor Zone is to promote orderly and harmonious development in the city, encourage the stability of land values and investments, promote general welfare, and to help prevent impairment and depreciation of land values and discourage the erection of structures within the Scenic Corridor Review Zone which are unsightly, undesirable or of obnoxious appearance."

Planning staff further quoted Municipal Code, Section 18.58.050 (D) which includes the "principles for Scenic Corridor Review" and which identifies "keeping in mind" conformity with the City's General Plan, but only further discusses "principles" related to building design costs, style, and materials. Fort Bragg Municipal Code, Section 18.61.062 "Coastal development permit processing" states, "A coastal development permit may be processed and issued in conjunction with the approval of any plan or permit containing sufficient detail to permit the issuing authority to make the required findings..." So the City Planner apparently reasoned that, by switching the Planning

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Commission's "Findings" for SCR disapproval into the affirmative, the City had complied with this regulation and the CDP could be issued.

Procedurally, the City Planner, and City Legal Counsel, followed by the City Councilmembers, treated the Scenic Corridor Review Permit, on appeal, as if the only relationship this Permit had to the project was the building design standards allowed by the project's Highway & Visitor Commercial Service Zone designation (HVC) Municipal Code, Ch.18.26, and Scenic Corridor Combining Zone designation (SCZ) Municipal Code, Ch. 18.58. For example, HVC Municipal Code, Section 18.26.0303 E allows for a maximum 35' building height. SCZ has no height regulation, therefore the 35' maximum is not "modified" per Combining Zone Regulation Section 18.50.010. Staff advocating for the project applicant states, the applicant is "not asking for any variances or exceptions to the Municipal Code." (Agenda Item Summary Report, page 2, paragraph 5.) Following this reasoning the City then determined that since a 35' height is the maximum allowed height standard according to the HVC and SCZ sections of the Municipal Code, then the project's height of 25' (+) is in conformance with the Scenic Corridor Review Permit criteria.

This reasoning was encouraged by staff completely absent any consideration of the visual and scenic protection regulations under the Coastal Zone/Combining Zone (CZ), Municipal Code, Ch. 18.61 B, because the Coastal Development Permit directly related to the CZ regulations was considered "approved" by the Planning Commission and not a subject of the appeal.

This is in opposition to the Coastal Act Section 30251, which requires protection and enhancement of coastal visual resources and highly scenic areas. This Coastal Act Section is reiterated in the City's LCP-LUP, and once again in the City's regulations under CZ Municipal Code Section 18.61 B. The City's LCP-LUP specifically states, "*Along Highway 1 the City's Scenic Corridor Design Review system should be used to implement this (Coastal Act Section 30251) policy.*" (Empasis added.) The City's LCP Manual also states, "Any policy conflicts between the General Plan and the LCP must be resolved in the LCP because for those parts of the City in the Coastal Zone, the LCP will supersede the General Plan in any matters where they differ." (Page 5, paragraph 2) Yet, in the City's "SCR findings only appeal" procedure, whereby

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it piecemeals the development proposal, the City's General Plan Zoning Ordinances, and implementing regulations are allowed to supersede the LCP and Coastal Act.

At the City Council's Scenic Corridor Review Permit appeal hearing the public presented once again its same concerns about the proposed project's impacts on the area's visual and scenic resources to and along Hwy 1 and the park Haul Road. The public also raised an additional new concern that a stand of 16 to 25 foot trees were to be cut down because the stand area was identified in the project's landscaping plans as 0 to 8 foot trees. Councilmembers expressed concern about this stand of trees, but failed to condition the project for this stand's preservation. The Council was advised by its Legal Counsel that it could not "hear" or decide on environmental review issues or CDP related issues, raised by the public at the hearing, even though we addressed our "SCR findings only appeal" process concerns. The City Council then voted 4 to 1 to overturn its Planning Commission denial, and approve the SCR with "findings" as proposed by staff.

At best, the City's procedural encouragement for the Scenic Corridor Review Permit to be amputated from the body of the development proposal (which then excludes all Coastal Development Permit and CEQA environmental considerations) has resulted in confusion for the public and developers. However, the worst is more likely. We believe that the City Planner has deliberately perverted the development proposal review and approval process to lead the City decision makers into negating CEQA and CDP guidelines and requirements.

There are several past examples illustrating the reason for our belief. One example is the Denny's Restaurant, in which residents (not Friends of Fort Bragg) appealed its SCR approval, and in the noticeable absence of being informed otherwise were led to believe visual and other environmental impact concerns could be raised at the City Council appeal hearing, then upon submission of their detailed appeal were informed "they had filed the wrong kind of appeal" too late to refile. In the subject area, the Hunt/Beachcomber motel second story addition and the recently built Surf and Sand Motel, (discussed in detail further on) had SCRs which we suspect were approved by a staff interpretation (bolstered by the SCR appeal process) that the SCR was

related to Highway & Visitor Commercial Municipal Code, since the CDP was related to the Coastal Zone Municipal Code. In both these cases, an amputated Scenic Corridor Review Permit consideration was allowed to supersede the LCP-LUP.

In conclusion, we request the Coastal Commission's members and staff to review City's entire coastal development approval processes for consistency with the Coastal Act, the City LCP-LUP, and with CEQA.

**Substantive issue: Project Impact on the visual and scenic qualities of a heavily used coastal area**

When the Coastal Act of 1976 was approved by voters, the subject area consisted of three 1 story motels only. When the City's Local Coastal Plan and its amendments were approved by the Coastal Commission in 1986, the subject area consisted of these same 1 story motels only. When the 1987 amendments to the Coastal Act were approved the area still had only these 1 story motels. Both the Coastal Act and the City's LCP zoning for this area state, ..."The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal area...New development in highly scenic areas shall be subordinate to the character of its setting." (Emphasis added.)

In 1988, the 2 story Surf and Sand Motel was approved by the City in clear violation of the City's LCP and the Coastal Act. The scenic and visual qualities of the subject area were not protected, the building not subordinate to the character of the area and to the other 1 story motels in place at the time, and the project was not required to connect to City water and sewer. The public had little or no indication of the actual impact of this motel until it was actually built in 1996.

In 1994 or so, a second story addition to the Beachcomber motel was approved and built, blocking out a large portion of the visually protected Glass Beach coastal bluffs, again in violation of the City's LCP and the Coastal Act. At that time the Surf and Sand had not yet been built and all motels in this area

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were 1 story only. Then in 1996 the Surf and Sand was built adding a additional second 2 story motel to the area.

Neither of the two 2 story motels located in between Hwy 1 and the Haul Road as approved are subordinate to the character of the setting. They dominate the coastal bluff/ocean/State Park viewshed. It is our understanding that the definition of "subordinate to the character of its setting" means; where there are existing developments in a scenic area, the new coastal developments must generally conform to the same size and height of the existing developments. We believe this is the Coastal Commission's policy definition, and the legal interpretation of "subordinate to the character of its setting" as it is thoroughly discussed in the Sea Ranch Development, Section 30610 of the Coastal Act.

The City is attempting to use development it approved contrary to the Coastal Act and its LCP in the past to justify approving a current development that is not subordinate to the original 1 story motel character of the subject area. The project applicant argues that because there are two large 2 story motels now, and his so-called "dilapidated" existing 1 story motel is currently blocking a view of "ocean water" the proposed 2 story motel will not visually degrade the public's view of the "ocean" and it is not "out of character" for the area. The applicant also argues the City SCR regulations "entitles" him up to a 35' high motel with little to no set-back from the Haul Road.

However, the City has failed to consider the cumulative impacts of additional 2 story motels on the scenic and visual qualities of the entire subject planning area (North Highway 1 Annexation Pudding Creek Area). The Coastal Act, Section 30009, states "This division (the California Coastal Act of 1976) shall be liberally construed to accomplish its purposes and objective." Even with the very intrusive Surf and Sand Motel, and the loss of the once stunning view of the Glass Beach headlands due to the Beachcomber addition, this area still retains a unique (to the City of Fort Bragg jurisdiction) sense of openness, view of State Park bluffs along the Park Haul Road, and supplies a visually gentle respite transition area from a rural mixed light to heavy industrial, and housing use, to fully developed city down-town. The Haul Road, designated by State Parks as a recipient of a very large federal

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transportation grant for Pudding Creek trestle bridge and path renovation west of the motels and traveling along the ocean bluff, is rapidly growing in visitor and resident popularity for walking, jogging, bicycling, and skating. The City permitted the Surf and Sand Motel to build within a few feet of the Haul Road, its towering second story now looming over public access to the north, the State Park to the west, and Hwy 1 to the east. The subject development proposal, on a larger scale will further loom over the access, park, and Hwy. Traveling by this area on Hwy 1 going south, the Surf and Sand Motel blots out all coastal sky (unless you look straight up), the subject project will do the same giving the area a long tunnel effect.

Coastal residents concerned with the subject project do not object to a new motel in place of the existing one. They may not even object to some additional second story portions. However, the project as designed, is a large, long rectangular concrete block sited within a few feet of the Haul Road/park property line. What the two-story motel, as proposed, will do is to erase all view of the coastal sky from the windows in a car (which can now be seen when driving by), creating an abrupt and total blocking of even the merest hint of coast and all sky. Staff claims this is not "incompatible" with the area. While this may not be "incompatible" with the experience of having the coastal sky blotted out by the Surf and Sand Motel, it is contradictory with City and State viewshed policy of protection of the "visual quality" that exists and enhancement of what remains. "Visual quality" is not subjective, nor is it subject to a debate of whether a building is attractive or not attractive in terms of City and State policy. "Visual quality" is determined by the elements of the coastal sky, bluff, and ocean, what can and cannot be seen of these elements.

**Substantive Issue: The stand of trees are not protected**

Planning staff did not review or acknowledge the stand of 16' to 25' trees located on the north side of the subject property in any project planning document. Our review of the blue-lined landscaping planning map and the landscaping planning map attached to the development proposal's Negative Declaration demonstrated to us that these two landscaping plans are very different from one another, and neither show the existence of the stand of tall trees. According to our read, the rest of the project's plans illustrate

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that the proposed parking and buildings are located where these trees now stand. If these trees are to be cut down, the project applicant will need a Coastal Development Permit to do so. Yet the Reviewing Agencies, Planning Commission and the public were misled. These trees were never mentioned in the initial project application, Negative Declaration, or plant survey supporting the conclusions in the Negative Declaration. On SCR appeal and when this stand of trees were brought to light, the City Council failed to condition the project for protection of these trees.

It would seem that these trees would eventually be reviewed in a Coastal Development Permit required for their removal. However, the City Planner has in the past consistently failed to inform the Planning Commission upon project review, and the developer at the time of the project's CDP issuance that large trees located in the Coastal Zone require special consideration. In the case of the Affinito/Social Service building project, (located in the Coastal Zone, but east of Hwy 1) a marvelous block long stand of 60 + very large, tall cypress trees, located along the property boundary line, were specifically protected by action of the City Council when the City owned the property. The City devoted funds to have these trees inspected for age and disease, and subsequently designated some for trimming, and a few for removal due to age and/or disease. The developer cut down the entire stand early one morning a few months ago. The Planning Commission was not informed of the trees via planning maps for project approval. The developer was not informed by staff that the trees were "protected" by special action of the City Council a few years ago.

The community is outraged. The Planner has neglected to bring the issue back before the Planning Commission, even though he was requested to do so by a Commissioner. The public fears the City cannot require replacement of these trees because the developer has built the project right up to the property line.

We request a specific condition for the Coastal Development Permit that the subject development proposal trees are to remain standing.

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**Substantive Issue: Water source for the project's city service connection is not assured, and to be supplied by overdrafting portion of Noyo River located in the Coastal Zone.**

The staff report to the Planning Commission for this project quotes Public Works Policy XV-9: "The City shall determine, when it receives a Coastal Development Permit application, that adequate potable water is available to service the proposed facility, including during peak service demands." Staff's response to this is to state, "public works facilities have been planned for".

We'd like to point out to the Coastal Commission that, under the State Department of Health Drinking Water Division restrictions on the amount of water the City has available to meet existing connections, in Sept/Oct. of 1995 the city used 96% of the water available. Current amount available was not discussed in the Negative Declaration.

The City and Georgia-Pacific water supply drafting point is located about 3 miles from the mouth of the Noyo River and within the Coastal Zone boundary designation for the river. The Noyo River is a coho salmon and steelhead spawning river. The coho is a federal designated endangered species, and the steelhead are approaching this listing. The cumulative impacts of this project and other approved and proposed projects on water availability and impact on protect species dependant on the Noyo River Coastal Zone area have not been addressed.

Staff's discussion in the development proposal's Negative Declaration under Item #12: Utilities and Service Systems, lack of discussion under Items #4: Water, and #7 Biological Resources, and mitigation measure of using the City's Water Retrofit Program for new water connection does nothing to mitigate, or inform decision makers or the public about the City's historic, continued, and current overdraft and violation of its fish by-pass flows in the Noyo River Coastal Zone area. The Retrofit Program mitigation will in fact, use up the City's ability to further reduce its overdraft of the Noyo River. Also, there is no assurance, to date, that the Retrofit In-Lieu Fee will realize actual water saved, or added water production.

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The premise the City is using regarding its Retrofit Program is that the City is drafting less water from the Noyo River Coastal Zone now than it was at the time of the State Department of Health, Drinking Water Division, water connection moratorium (resulting from a 1992 complaint filed with State Water Resources Control Board by the California Department of Fish and Game). Therefore, according to the City, if the City does not "increase" the amount of water it is drafting from the river and delivering to water connections, (its "supply"), by requiring a retrofit of existing connections with water saving devices equal to the amount of water that would be used by the new motel connection, then the City has sufficiently mitigated the impact on the environment. However, even at the City's historically lowest water drafting/delivery year, the coho/steelhead fish by-pass flow requirement has been violated. The City's historic and on-going violation of fish by-pass flow requirement in its water rights permit is the environmental impact and coastal resources impact that has not, but must be considered when adding new connections to the delivery system.

The City would argue that the Department of Health, Drinking Water Division, approved of this Retrofit Program and subsequently lifted the new connection moratorium. The Department of Health, Drinking Water Division, has no mandate to protect the environment or coastal resources, i.e., the coastal river dependant species and habitat, only to insure there is adequate water supply available for delivery. The City, however, does have a legal obligation, under CEQA and the Coastal Act, to not impact the environment, or to reduce the impacts to the extent feasible.

The primary issue according to environmental review criteria under CEQA and coastal resource protection is not water delivery or even water supply, but overdrafting the river and impacting the Coastal Zone environment in order to service existing connections. The City cannot rely on "we're not going to make a bad situation worse" to serve as any sort of mitigation or discussion of the environmental impacts or protection of coastal resources.

For the above stated reasons, and the following reasons given below, a full Environmental Impact Report must be done on this motel's impact, including

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Appeal	

other projects in the pipeline's cumulative impacts on the Noyo River Coastal Zone and its dependant, endangered species.

- Friends of Fort Bragg is currently engaged in litigation over this very matter in *Noyo River vs. City of Fort Bragg, California Water Resources Control Board, Department of Health Service, Drinking Water Program, and Georgia-Pacific*. The Third Cause of Action, in this case, is these entities' non-compliance with CEQA. (We incorporate by reference the full Petition for Writ of Mandate and Complaint For Injunctive and Declaratory Relief in this Mendocino County Superior Court Case No. 74138)

- Environmental Impact Reports focusing on water are being done for 3 currently proposed motels located in the Coastal Zone. These have not been completed to date. This motel received connection approval, placing it ahead in the lineup for a limited resource, allowing its use to impact protected coastal resources when all other Coastal Zone motels are being required to complete EIR's focusing on the Noyo River overdraft. It seems to be a grant of special privilege for the Miller project. It is our understanding that the Environmental Impact Report for the City's new General Plan will contain a "worst case" analysis of build out for the City, the amount of water available and needed, and impacts on the Noyo River. The draft of this EIR is not yet available for review.

- The City has not developed any policy based on a complete analysis of all its water programs, and water source research programs, for who does or does not receive new connections, when, and under what conditions.

- The City has not developed any viable short-term solutions to the overdraft of the river, other than financially penalizing annual low water users, and rewarding high water users by allotting them more water at lower prices in times of drought/water emergency conditions.

- Under the Department of Health Drinking Water restrictions on the amount of water the City has available to meet existing connections, in Sept/Oct. of 1995 the city used 96% of the water available, while continuing to grossly violate its Noyo River fish by-pass flow permit requirements.

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- The City has not developed any viable long term solution(s) such as alternative water sources, storage reservoirs, water reclamation, or desalinization. Much study, time, and tax dollars have been committed in the last 8 or so years, and to date no resolution is in place.

- The City currently has no source of water with which to serve existing water connections that can be considered reliable under drought conditions. The City has known about and failed to address this situation since 1985. (We incorporate by reference the full Engineering Report prepared by the State of California Department of Health Services, entitled *In the Matter of the Permit Application*, March 1991, which was not listed as a plan consulted for the Negative Declaration.)

- As a result of our lawsuit, State Water Resource Control Board has proposed a tentative resolution for the Noyo overdraft problem via a permit amendment which would allow the City to only draft at high-tide during low-flow season. This "solution" has not been "tested" to date, and workability along with amount of water available for service connections are unknown. It is a concern of all involved parties that the City could draft high-tide salt water and/or increase salt water intrusion further up river which would endanger coho, steelhead eggs and other species.

-The Planning Commission discussed the need for but failed to adopt a condition that this project's water use would be monitored over a year, and if the required retrofits did not save the amount of water necessary for no impact on the river then additional retrofits would be added.

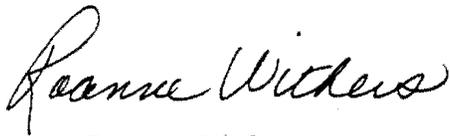
- The City has failed to notify the developer within the project's Coastal Development Permit that in the event of a water connection moratorium by the Department of Health, either upon its initiative, State Water Resources Board imposed permit restrictions, or as a result of a pending court decision, water may not be available to service the project.

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	Miller
	Appeal

RECAP

We request the Coastal Commission's members and staff to review City's entire coastal development approval processes for consistency with the Coastal Act, the City LCP-LUP, and with CEQA. We further request that a condition be placed on the CDP prohibiting the removal of the stand of trees. We also request the Commission's finding that the City of Fort Bragg must require an EIR on scenic and visual impacts, and water supply availability and overdraft on the Noyo River for this development proposal.

Thank you for your time and consideration about our efforts towards resolving some of the serious planning problems ignored by the City which impact developers, visitors, and residents alike.



Roanne Withers



Ron Guenther

For Friends of Fort Bragg

Attachments to Hard Copy to Coastal Commission staff: City of Fort Bragg  
Municipal Codes regulating Coastal Developments

cc: City of Fort Bragg, 416 N. Franklin St., Fort Bragg, CA 95437

Per City Notice of Final Determination/Permit Status Notification:

Applicant: Don & Helen Miller, 632 N. Main St., Fort Bragg, CA 95437  
Gary Analoff c/o Don & Helen Miller  
Mary Rose Kaczoroswki & Judith Vidaver, P.O. Box 25, Fort Bragg, CA 95437  
Char Flum, 318 N. Whipple St., Fort Bragg, CA 95437  
Andy Harney, P.O. Box 2833, Fort Bragg, CA 95437  
Paul & Barbara Clark, 809 N. Main St., Fort Bragg, CA 95437  
Charlotte Figuerdo, 440 S. McPherson St. Fort Bragg, CA 95437  
Treva VandenBosh, 620 Stewart St., Fort Bragg, CA 95437  
Bob Hunt, 1111 N. Main St., Fort Bragg, CA 95437

EXHIBIT NO.	8
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MILLER	
Appeal	

EXHIBIT NO.	9
APPLICATION NO.	A-1-FTB-97-33
MILLER	
Notice of Final Action on SCR 10-96	



**CITY OF FORT BRAGG**

*Incorporated August 5, 1889*  
 416 N. Franklin St.  
 Fort Bragg, CA 95437  
 FAX 707-961-2802

**RECEIVED**  
 APR 18 1997

CALIFORNIA  
 COASTAL COMMISSION

**NOTICE OF FINAL ACTION  
 ON SCENIC CORRIDOR REVIEW**

SCR 10-96<sup>1</sup>

The following project is located within the Coastal Zone of the City of Fort Bragg. On April 14, 1997, final action was taken by the Fort Bragg City Council on the following application:

**ASSESSOR PARCEL NUMBER:** 069-241-31  
**APPLICANT:** Don Miller  
**MAILING ADDRESS:** 632 North Main Street  
 Fort Bragg, CA 95437

**DESCRIPTION AND LOCATION:**

Demolition of existing 11 unit motel and construction of a new two-story 30 unit motel, parking and landscaping, 1141 North Main Street, Fort Bragg, California

Application File Number(s): SCR 10-96; filed June 10, 1996

Action was taken by the Fort Bragg City Council

ACTION: XX Approved \_\_\_ Denied \_\_\_ Approved with conditions

See notification attached, and hereby made a part of this notice for the full findings and decision.

This project is: Not appealable to the Coastal Commission.

XX Appealable to Coastal Commission pursuant to Public Resources Code Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within ten working days of Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission District office.

  
 DeeLynn R. Carpenter,  
 City Clerk

cc: Permit file  
 Applicant  
 California Coastal Commission

<sup>1</sup> Companion CDP 10-96, adoption of Negative Declaration and Mitigation Measures/Conditions filed June 10, 1996 for this same project were approved by the Fort Bragg Planning Commission on February 26, 1997.

EXHIBIT NO.	9
APPLICATION NO.	A-1-FTB-97-33
	MILLER
Notice of Final Action on SCR 10-96	



**CITY OF FORT BRAGG**

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 CALIFORNIA  
 COASTAL COMMISSION

**PERMIT STATUS NOTIFICATION**

This document constitutes notification of the decision as indicated below. If you have any questions, please contact Scott Cochran, Planning Director, or Betty Partridge, Office Clerk at City Hall.

**SUBJECT** An appeal by DONALD Y. MILLER AND HELEN MILLER in conjunction with the Planning Commission decision of February 26, 1997 denying SCR 10-96; Don Miller (owner); 1141 North Main Street; Demolition of existing 11-unit motel and construction of new 2-story, 30-unit motel, parking and landscaping

**DECISION**

Moved by Melo, seconded by Olbrantz to uphold the appeal of Donald Y. Miller and Helen Miller (SCR 10-96) and reverse the Planning Commission decision of February 26, 1997, denying SCR 10-96; Don Miller (owner); 1141 North Main Street; Demolition of existing 11-unit motel and construction of new 2-story, 30-unit motel, parking and landscaping with the following findings:

**SCENIC CORRIDOR REVIEW FINDINGS**

1. The structure is so designed that it, in general, contributes to the character and image of the City as a place of beauty, spaciousness, and balance.
2. The exterior design and appearance of the structure is not of a quality or scale so as to cause the nature of the neighborhood to materially depreciate in appearance and value.
3. The structure is in harmony with proposed adjacent development in the area and the Scenic Corridor Zone and is in conformity with the General Plan of the City.

**VOTE:** Ayes: Councilmembers Olbrantz, Huber, Melo and Mayor Peters.  
 Noes: Councilmember Galli.

PLAN

This project is appealable to the Coastal Commission pursuant to Public Resources Code Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within ten working days of Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission District office.

WITNESS MY HAND AND OFFICIAL SEAL THIS 17<sup>TH</sup> DAY OF APRIL, 1997.

CITY OF FORT BRAGG

By: DeeLynn R. Carpenter

DeeLynn R. Carpenter, City Clerk

**DECISION BY:** Fort Bragg City Council  
**NOTIFICATION MAILED TO:** Don/Helen Miller, 632 N. Main Street, Fort Bragg, CA 95437  
**DATE OF DECISION:** April 14, 1997  
**DATE OF MAILING:** April 17, 1997

EXHIBIT NO.	10
APPLICATION NO.	A-1-FTB-97-33
MILLER	
Notice of Final Action on CDP 10-96	



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**CITY OF FORT BRAGG**

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CALIFORNIA  
COASTAL COMMISSION

**NOTICE OF FINAL ACTION  
ON COASTAL DEVELOPMENT PERMIT**

CDP 10-96

The following project is located within the Coastal Zone of the City of Fort Bragg. On February 26, 1997, final action was taken by the City on the following application:

A. P. NUMBER: 069-241-31

APPLICANT: Don Miller

MAILING ADDRESS: 632 North Main Street, Fort Bragg, CA 95437

DESCRIPTION AND LOCATION: Demolition of existing 11 unit motel and construction of new two-story 30 unit motel, parking and landscaping; 1141 North Main Street, Fort Bragg, California

Application File Number(s): CDP 10-96, filed June 10, 1996

Action was taken by Planning Commission

ACTION:    Approved                      Denied                      XX Approved with conditions

See notification attached, and hereby made a part of this notice for the full findings and decision.

This project is: XX    Appealable to Coastal Commission pursuant to Public Resources Code Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within ten working days of Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission District office.

*Betty Partridge*  
\_\_\_\_\_  
Betty Partridge  
Office Clerk

cc: Permit File  
Applicant

EXHIBIT NO. 10
APPLICATION NO. A-1-FTB-97-33
MILLER
Notice of Final Action on CDP 10-96



**CITY OF FORT BRAGG**

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 MAR 10 1997

CALIFORNIA  
 COASTAL COMMISSION

**AMENDED**  
**PERMIT STATUS NOTIFICATION**

This document constitutes notification of the decision as indicated below. If you have any questions, please contact Scott Cochran, Planning Director, or Betty Partridge, Office Clerk at City Hall.

**SUBJECT**

CDP 10-96; Don Miller; 1141 North Main Street; Demolition of existing 11 unit motel and construction of new two-story 30 unit motel, parking and landscaping

**DECISION**

MOTION by Stuart, seconded by Bailey to approve CDP 10-96, adopt the Negative Declaration and its Mitigation Measures/Conditions with the following findings and conditions:

**COASTAL DEVELOPMENT PERMIT FINDINGS**

1. Project is not located within an environmentally sensitive habitat area.
2. The project development is in conformity with the certified Land Use Plan of the City of Fort Bragg's Local Coastal Plan.
3. The proposed use is consistent with the intent and purpose of the zoning district in which the property is located.
4. Approval is necessary to protect a substantial property right of the applicant.
5. Approval will permit a use which will be compatible with other uses in the area, and which will not be detrimental to other uses, rights or properties in the area.
6. The proposed use is one of the specifically enumerated uses allowed in the zoning district specified.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

**NEGATIVE DECLARATION FINDINGS**

The proposed project will not have a significant adverse effect on the environment; specifically in the following areas:

1. It will not have the potential to degrade the quality of the environment.
2. It will not achieve short-term, to the disadvantage of the long-term, environmental goals.
3. It will have no impacts which are individually limited, but cumulatively considerable.
4. It will not cause substantial adverse effects on human beings, either directly or indirectly. (Section 15082, CEQA guidelines)
5. Technical data and research, supplied by qualified experts, assisted the lead agency in identifying potential environmental impacts associated with the project. Through the use of a Mitigated Negative Declaration, the lead agency has recommended mitigation measures in conjunction with the conditions of approval to reduce potential environmental impacts to less than significant thresholds.

6. The subject request has met the scrutiny of the California Environmental Quality Act (CEQA) process, supporting documentation in the areas of drainage, noise, plant surveys, traffic, cultural resources investigations, geologic study, previous studies including the North Fort Bragg Traffic Plan, North Fort Bragg Infrastructure Extension, Fort Bragg Redevelopment Project EIR, the City's General Plan, Zoning Code and Local Coastal Plan, and the City's Water System Study and Master Plan, along with site analysis were used in order to determine that a Mitigated Negative Declaration could be recommended by the lead agency on this project. Environmental concerns have been adequately addressed through mitigation measures that have also been incorporated into the conditions of approval for the project.
7. All of the referral entities identified have reviewed the proposal and the Initial Study conducted by the lead agency and have no objections to the proposed Mitigated Negative Declaration of Environmental Impact for the proposed project.
8. The following entities were sent copies of this proposal, the Initial Study, and the project's Mitigation and Monitoring Plan to:
  - a) Mendocino County Planning Department;
  - b) Mendocino County Public Works Department;
  - c) Mendocino County Environmental Health Department;
  - d) Mendocino County Air Pollution Control District;
  - e) Caltrans - District 1;
  - f) State Water Quality Control Board;
  - g) State Department of Parks and Recreation;
  - h) California Coastal Commission;
  - i) State Department of Fish and Game;
  - j) State Office of Planning and Research;
  - k) US Department of the Interior;
  - l) US Fish and Wildlife Service;
  - m) Fort Bragg Unified School District;
  - n) Northwest Information Center (Sonoma State University);
  - o) Pacific Gas and Electric;
  - p) Century Cable;
  - q) California Highway Patrol;
  - r) Fort Bragg Police Department;
  - s) Fort Bragg Fire Department;
  - t) Fort Bragg Engineering Department;
  - u) Fort Bragg Redevelopment Agency Executive Director;
  - v) Fort Bragg Water Project Manager; and
  - w) Fort Bragg Deputy City Manager/Public Works.

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A response due date of December 31, 1996 was given to the above entities.

9. The subject request complies with the applicable policies of the City of Fort Bragg's 1980 General Plan, Zoning Code and Local Coastal Plan as evidenced in the project's Initial Study and staff report.
10. Approval of this request will give consideration to the redevelopment of an underutilized parcel of commercial land in Fort Bragg. The proposed motel, increasing by 19 units, would add tax increment dollars to the Redevelopment Agency, generate additional sales and transient occupancy taxes for this property and provide entry level jobs for the youth and unemployed of this community.

MITIGATION MEASURES/CONDITIONS

1. The development will be required to use City water and sewer.
2. The existing well will be used for landscaping purposes only. A backflow prevention device shall be installed on said well.

3. Engineered design drainage system of infiltration and trenching. The system would work as follows:
  - a) Runoff from the two easterly buildings and asphalt entrance would be directed into infiltration trenches in the planter area at the south quadrant of the site.
  - b) Runoff from the westerly asphalt areas and the two westerly buildings will be directed to infiltration trenches between the westerly buildings and the westerly property line.
  - c) Under heavy rainfall conditions, the runoff from the westerly building could exceed the ability of these trenches to handle the water. The excess water will be collected in a pump chamber near the northwest property corner. The pump system will pipe the water into a series of infiltration trenches in the northeast quadrant of the property.
4. Elimination of the existing septic system.
5. Disallowance of wood burning stoves and fireplaces.
6. Use low emission mobile construction equipment (e.g., tractor, scraper, dozer, etc.).
7. Water site and clean equipment morning and evening.
8. Spread soil binders on site, unpaved roads, and parking areas.
9. Apply approved chemical soil-stabilizers, according to manufacturers specifications, to all inactive construction areas (previously graded areas which remain inactive for 96 hours).
10. Reestablish ground cover on construction site through seeding and watering.
11. Employ construction activity management techniques, such as: extending construction period; reducing the number of pieces used simultaneously; increasing the distance between emission sources; reducing or changing the hours of construction; and scheduling activity during off-peak hours.
12. Pave construction roads and sweep streets if silt is carried over to adjacent public thoroughfares.
13. Reduce traffic speeds on all unpaved road surfaces to 15 miles per hour or less. Suspend all grading operations when wind speeds (as instantaneous gusts) exceed 25 miles per hour.
14. Wash off trucks leaving the site.
15. Maintain construction equipment engines by keeping them tuned.
16. Use low sulphur fuel for stationary construction equipment.
17. Utilize existing power sources (e.g., power poles) or clean fuel generators rather than temporary power generators.
18. Use low emission on-site stationary equipment.
19. Closure of north driveway.
20. Prior to occupancy, construction of a left turn lane to Caltrans' standards.
21. Implementation of a corridor preservation setback of 50' from highway centerline.
22. Conduct a field survey in March 1997 to determine the presence of Point Reyes Blenosperma and Roderick's Fritillary.
23. Hire a contractor to retrofit 84 residential units now being served by the City's water system which do not have low flow water fixtures.
24. Landscaping will be drought tolerant vegetation and irrigated by existing well on property.
25. Applicant must demonstrate that he has obtained the necessary amount of water retrofits before the City will approve a building permit or other entitlement necessary to let the motel go into business.
26. The project shall be designed that night lighting is shielded downward and directed away from adjacent properties.

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Notice of Final Action on CDP 10-96	

27. During construction, prior to occupancy, the following shall occur:
- a) Monitoring will consist of directly watching the major excavation process. Monitoring will occur during the entire work day, and will continue on a daily basis until a depth of excavation has been reached at which resources could not occur. This depth is estimated as usually about five feet below grade at the beginning of the project, but may require modification in specific cases, and will be determined by the monitoring archaeologist based on observed soil conditions.
  - b) Spot checks will consist of partial monitoring of the progress of excavation over the course of the project. During spot checks, all spoils material, open excavations, recently grubbed areas, and other soil disturbances will be inspected. The frequency and duration of spot checks will be based on the relative sensitivity of the exposed soils and active work areas. The monitoring archaeologist will determine the relative sensitivity of the parcel.
  - c) If prehistoric human interments (human burials) are encountered within the native soils of the parcel, all work should be halted in the immediate vicinity of the find. The County Coroner, project superintendent, and the Agency Liaison should be contacted immediately. The procedures to be followed at this point are prescribed by law.
  - d) If unique archaeological resources other than human burials are encountered, the project should be modified to allow the artifacts or features to be left in place, or the archaeological consultant should undertake the recovery of the deposit or feature. Significant cultural deposits are defined as archaeological features or artifacts that associate with the prehistoric period, the historic era Mission and Pueblo Periods and the American era up to about 1900. A representative of the Native American community must be contacted in all cases where prehistoric or historic era Native American resources are involved.
  - e) Whenever the monitoring archaeologist suspects that potentially significant cultural remains or human burials have been encountered, the piece of equipment that encounters the suspected deposit will be stopped, and the excavation inspected by the monitoring archaeologist. If the suspected remains prove to be nonsignificant or noncultural in origin, work will recommence immediately. If the suspected remains prove to be part of a significant deposit, all work should be halted in that location until removal has been accomplished. If human remains (burials) are found, the County Coroner must be contacted.
  - f) Equipment stoppages will only involve those pieces of equipment that have actually encountered significant or potentially significant deposits, and should not be construed to mean a stoppage of all equipment on the site unless the cultural deposit covers the entire building site. During temporary equipment stoppages brought about to examine suspected remains, the archaeologist should accomplish the necessary tasks with all due speed.
28. In the event that unique archaeological resources are unearthed during project construction, the applicant shall cap those resources by adding a protective layer of dirt and then placing the improvement right on top of this protective layer.
29. Applicant shall omit the words "walk to ocean" between buildings two and three.

EXHIBIT NO.	10
APPLICATION NO.	A-1-FTB-97-33
Notice of Final Action on CDP 10-96	

CONDITIONS

1. There shall be full compliance with all the requirements of the Fire, Health, Water, Sewer, Building, and Public Works Departments of the City of Fort Bragg.
2. All public utilities shall be installed underground.
3. Prior to issuance of a building permit for the proposed motel, the applicant shall submit signed and approved copies of the necessary Encroachment Permit(s) from Caltrans to the Community Development Department.
4. Prior to construction, applicant shall install a fire hydrant on the same side of the highway as the motel. Actual location will be determined by the Fort Bragg Fire Protection Authority.
5. Applicant shall install a sprinkler system to Uniform Fire Code Standards for the motel complex.
6. Prior to construction, applicant shall submit improvement plans to the City Engineer for review and approval. Said plans shall demonstrate the engineered water drainage system of infiltration and trenching.
7. Coastal Development Permit 10-96 shall become null and void if the proposed activity has not started within two years of the date of approval for the subject request.
8. This permit may be revoked by the City of Fort Bragg at any time for violation of any of the terms and conditions of this permit by the owner, agents, or the representatives of the applicant.
9. The City, its officers, agents, and employees may inspect the property at any time and the applicant agrees not to deny or impede access to the subject property for the City.
10. This permit shall have no force or effect unless and until, accepted the terms agreed to, in writing by the applicant.

VOTE:     Ayes:     Stuart, Bailey and Matson.  
          Noes:     Doyle and Woelfel.

Any person aggrieved by an action of the Planning Commission may take an appeal to the City Council by filing a notice of appeal with the City Clerk within ten (10) days of the action of the Planning Commission. Appeal forms may be obtained from, and must be filed with, the City Clerk's office during normal working hours.

DECISION BY: Planning Commission.

NOTIFICATION MAILED TO:

Don and Helen Miller, 632 North Main Street, Fort Bragg, CA 95437.

DATE OF DECISION: February 26, 1997.

DATE OF MAILING: March 3, 1997.

COPIES OF NOTIFICATION MAILED TO:

Andy Harney, P. O. Box 2833, Fort Bragg, CA 95437;

Roanne Withers for The Friends of Fort Bragg, P. O. Box 198, Fort Bragg, CA 95437;

Judith Vidaver, P. O. Box 25, Fort Bragg, CA 95437;

Char Flum, 318 North Whipple Street, Fort Bragg, CA 95437;

Norman Dyck, 318 North Whipple Street, Fort Bragg, CA 95437;

Paul and Barbara Clark, 809 North Main Street, Fort Bragg, CA 95437;

Tim Aguilar, 4205 Mariposa Drive, Santa Barbara, CA 93110.

cc: County Building Inspector  
Permit File  
City Clerk/Deputy City Administrator  
Interim City Manager

EXHIBIT NO.	10
APPLICATION NO.	A-1-FTB-97-33
MILLER	
Notice of Final Action on CDP 10-96	

MEETING DATE  
January 22, 1997  
6:00 p.m.  
Planning Commission



DEPARTMENT  
City of Fort Bragg Community Development  
Incorporated August 5, 1889  
416 N. Franklin St.  
Fort Bragg, Ca 95437  
707-961-2825  
FAX 707-961-2802

## AGENDA ITEM SUMMARY REPORT

SUBJECT:

CDP 10-96 / SCR 10-96

REQUEST:

Approval of a Coastal Development Permit and a Scenic Corridor Review Permit for the demolition of an existing 11-unit motel, construction of a 30-unit motel, parking and landscaping

LOCATION:

1141 North Main Street

ASSESSOR PARCEL NO.:

069-241-31

APPLICANT:

Don Miller, 632 North Main Street, Fort Bragg, CA 95437

EXHIBITS:

1. Staff report for CDP 10-96 / SCR 10-96;
2. Application and Environmental Information Forms for CDP 10-96 / SCR 10-96;
3. Vicinity Maps, Existing Site Plan, Proposed Site Plan, Grading Plan, Floor Plans, Elevations;
4. Environmental Checklist Form for CDP 10-96 / SCR 10-96;
5. Discussion of Environmental Evaluation;
6. Mitigation Monitoring Plan;
7. Letter dated September 3, 1996, from Paoli Engineering;
8. Environmental Noise Analysis, dated July 19, 1996;
9. Botanical Survey, dated June 30, 1996, by Gordon McBride;
10. Traffic Study, dated July 16, 1996, by Bernard Johnson, P.E.;
11. Cultural Resource Evaluation, dated July 30, 1996, by Archaeological Resource Service;
12. Geotechnical Investigation, dated March 31, 1996, by Patrick J. Conway;
13. North Fort Bragg Traffic Plan Final EIR, dated September 28, 1992;
14. North Fort Bragg Infrastructure Extension, dated September 28, 1992; and,
15. Final Environmental Impact Report for Fort Bragg Redevelopment Project, dated March 1987.

SUBJECT PROPERTY:

The subject property, approximately 47,124 square feet in area, currently contains 11 motel units, a manager's quarters, storage areas with an existing well and a septic system serving the development. The site is relatively flat, with paved areas including some landscaping.

ZONING:

Highway Visitor Commercial (HVC)

COUNCIL ACTION

APPROVE \_\_\_\_\_

DENY: \_\_\_\_\_

TABLE: \_\_\_\_\_ UNTIL: \_\_\_\_\_

RECEIVE & FILE: \_\_\_\_\_

AGENDA ITEM:

EXHIBIT NO. 11

APPLICATION NO.

A-1-FTB-97-33

MILLER

City Staff Report on  
CDP 10-96/SCR 10-96

SURROUNDING LAND USES:

- West: Haul Road, MacKerricher State Park, Pacific Ocean Space-OS);
- East: Fort Bragg Floors (Light Industrial-IL), White property with an existing residence;
- North: Hi Seas Motel (Highway Visitor Commercial-HVC);
- South: Surf and Sand Motel (Highway Visitor Commercial-HVC).

STAFF ANALYSIS:

The applicant is requesting a Coastal Development Permit and a Scenic Corridor Review Permit for the demolition of an 11-unit motel and the construction of a 30-unit motel, parking and landscaping.

This type of activity is a permitted use within the HVC zoning district. It is situated in the City's Coastal Zone and Scenic Corridor, thus requiring a public hearing for the discretionary permits.

The project as proposed has been determined to be consistent with the City's 1980 General Plan, Chapter 18.26 of the City's Zoning Code and consistent with the City's Local Coastal Plan (LCP). The intent of the General Plan, Zoning Code and LCP are met by the proposed development.

Policies from the Fort Bragg General Plan (1980) applicable to the request include:

III. Goals and Objectives

B. Economic Development

Goal 2: To examine the role of the various commercial areas of Fort Bragg and to provide for their appropriate expansion of revitalization.

Objective 5: To encourage tourism and the support activities identified with visitor attractions and services.

Goal 3: To provide for orderly development that meets individual and community needs with the greatest benefit and least public cost.

Goal 4: To consider and select a growth pattern for Fort Bragg from development alternatives best suited to meet community goals and objectives.

Objective 1: Confinement of future growth to an "in-filling" process and an upgrading of existing land uses, e.g., vacant or underutilized properties. This alternative is designed to fully utilize existing utility capacities, street and public facilities/services at a minimum cost.

D. Environment, Open Space and Aesthetic Preservation

Goal 2: To treat the entry corridors to Fort Bragg as important gateways to the community and to place emphasis upon the urban design aspects of community appearance, architecture and landscaping.

Objective 1: To harmonize with, not compete, the natural setting of Fort Bragg, using compactness, sound land use planning, sensitivity to appearance and a sense of "place" as a person enters town.

Objective 2: To employ Scenic Highway criteria in the entry corridors where appropriate.

Goal 3: To maintain the natural environment as an integral component in Fort Bragg's development.

itive 1: To minimize the potential danger of environmental hazards through mitigation measures and by identifying areas of land use sensitivity in the General Plan and in future development proposals.

V. Land Use Element  
Highway and Visitor Commercial District

These centers cater to regional and transient traffic. Often takes form of strip commercial but later developments include clustering by function, e.g., "auto row", restaurants and fast food outlets, motels, etc. Minimal pedestrian traffic. Usually found along major arterials serving as entry points to a community or near major highway connections and community bypass routes. Because of their strategic location, these areas require special architectural and site design standards: garish signs should be avoided, access and egress should be accomplished in an orderly fashion, and landscaping should be used in a way that reinforces these areas' role as a transition between bucolic, natural areas and the City's urban center.

The proposed project is consistent with the above sections of the Fort Bragg General Plan.

6. The following sections of the Fort Bragg Zoning Code are applicable to this request:

Highway Visitor Service Commercial Zone

18.26.010 General purpose and intent.

The purpose of this zone is to provide districts oriented to regional and transient traffic. Such districts shall be located as provided in the General Plan, generally along highways which provide access without intrusion into other zones.

The provisions of this zone are intended to address architectural, site planning and access issues and standards to provide for convenience and to ease traffic congestion and aesthetic impacts on areas along highways. Little orientation to pedestrians is intended so that uses permitted will generally be oriented to vehicles, vehicular traffic and regional and/or transient trade. The regulations of this chapter and provisions of Chapters 18.71 and 18.72 apply in all HVC Zones and in the Coastal Zone Combining Zone unless otherwise provided in Chapter 18.61. (Ord. 588, 1982.)

The proposed project is consistent with Fort Bragg Municipal Code Section 18.26.010.

18.61.022 Water and Marine Resources.

Water and marine resources shall be maintained, enhanced and where feasible restored pursuant to the following specific standards:

A. Groundwater supplies.

The quality and quantity of groundwater supplies shall be maintained and where feasible restored through control of wastewater discharge and entrainment, runoff controls and prevention of groundwater depletion enforced as follows:

1. All new development in the Coastal Zone for which water or sewer service is needed shall be connected to the city water or sewer systems. Permits shall be withheld subject to applicant compliance with this provision. Limited exceptions to this requirement may be allowed by the approving authority in special or hardship circumstances and where accompanied by specific findings.
2. Existing development in the Coastal Zone currently utilizing well and/or septic systems that do not meet health standards

shall convert to city water and sewer. No permits for renovation, reconstruction, rehabilitation or renewal shall be granted without applicant compliance with this provision

- 18.61.028 Coastal visual resources and special communities.
- A. The following shall be considered Coastal scenic corridors:
    - 1. Along the west side of Highway One.
    - 2. Along the bluff of the Noyo River including any area within viewing distance from the bluff, and the bluffs at the mouth of Pudding Creek within the Coastal Zone (CZ).
    - 3. The area along Highway 20, with views to the ocean and Hare Creek Cove within the Coastal Zone (CZ).
  - B. Permitted development within the Coastal scenic corridors, where otherwise consistent with the Coastal Lane Use Plan, shall, as determined by the approving authority:
    - 1. Minimize the alteration of natural landforms.
    - 2. Be visually compatible with the character of the surrounding area.
    - 3. Be sited and designed to protect views to and along the ocean and scenic coastal areas.
    - 4. Wherever feasible, restore and enhance visual quality in visually degraded areas.
  - C. All new industrial development sited next to visitor serving land uses and facilities including public accessways shall be designed so as to minimize the visual impact on adjacent visitor serving land uses and facilities.

The project as proposed is consistent with Fort Bragg Municipal Code Section 18.61 and discussed further under Aesthetics.

- 7. The following section of the City's Local Coastal Plan are applicable to this request:

Recreation and Visitor Serving Facilities

The basic goal of the State for the Coastal Zone is to:

- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners. (Section 30001.5)

The Local Coastal Plan's related policy (IV-1) reads:

Policy IV-1: Additional Sites for Visitor Serving Commercial. The City shall provide for and encourage additional visitor serving commercial facilities by:

- 1. Maintaining existing areas designated for highway-visitor serving commercial;
- 2. Allowing visitor-serving uses within all commercial land use designations; and,
- 3. Maintaining the "highway-visitor serving commercial" land use designation as one allowing primarily recreational and visitor serving land uses.

The project as proposed is consistent with the Recreation and Visitor Serving Facilities chapter of the City's Local Coastal Plan.

Water and Marine Resources

Policy VI-1/XV-2: New Development to Use City Water and Sewer. All new development constructed in the City Coastal Zone shall be connected to the City water and sewer systems. Limited exceptions to this requirement may be allowed in special or hardship circumstances.

The project will be required to be connected to City water and sewer.

Policy VI-2: Conversion of Existing Well and Septic Systems to City Water and Sewer. Existing development that utilizes well

and septic systems shall be phased out and included assessment districts.

The existing well on the property will be utilized for landscaping purposes only. All other water uses will utilize City water. The existing septic system will be abandoned and the motel required to utilize City sewer.

Policy VI-4: Changes in Runoff Patterns. Changes in runoff patterns which result from new development, either by virtue of changes in land forms or from increases in impervious surfaces, shall not cause increases in soil erosion or stream sedimentation, nor shall they disturb environmentally sensitive riparian or wetland habitats. Such changes may be allowed only if mitigation measures sufficient to allow for the interception of any material eroded as a result of the proposed development have been provided.

A formal engineered system of infiltration, trenching and elimination of the septic system will enable runoff to be handled on-site, thereby not allowing storm water to run off the property.

Coastal Visual Resources

Policy XIV-1: General Policy on Visual Resources. New development within the City's coastal zone shall be sited and designated to protect views to and along the ocean, be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The project as proposed is consistent with the above policy.

The floor plan demonstrates fireplaces on the second story units. The Mendocino County Air Pollution Control District (APCD) has stated use of fireplaces would contribute to existing and projected exceedences of air quality. Staff will require as a condition/mitigation measure a prohibition of wood burning stoves or fireplaces. This measure would reduce the significant impact on air quality to a level of less than significant.

The project's impact to Highway One and its own on-site parking have been analyzed. A traffic study for the project has been reviewed by City staff and Caltrans.

The traffic study revealed that the critical movement in and out of the motel is the left turn lane onto the Ocean View. This turn is approximately 3% of the northbound through movement of 440 vph and would be turning against 320 vph southbound.

This condition is in the range where a left turn lane is warranted based on the National Cooperative Highway Research Program (NCHRP), Report 279 A Guide for Intersection Channelization. The primary benefits are reduced delay and lower accident potential.

Caltrans has reviewed the project's traffic study. In addition to agreeing with the recommendations of the study, Caltrans offered the following comments:

- 1) Applicant to establish and implement a corridor preservation setback of 50' from highway centerline;
- 2) Adequate provision be made for off-street parking;
- 3) Support the use of single access driveway, located at the southern end of the project site; and,

The motel sign will be sited in a landscaped island just west of Highway. The sign is 12' wide and 10' high. The sign will have 12 letters with a blue background and natural wood posts with lighting from the ground up.

RECOMMENDATION:

Staff recommends approval of CDP 10-96, SCR 10-96 and adopt the Mitigated Negative Declaration with the following findings and conditions:

COASTAL DEVELOPMENT PERMIT FINDINGS

1. Project is not located within an environmentally sensitive habitat area.
2. The project development is in conformity with the certified Land Use Plan of the City of Fort Bragg's Local Coastal Plan.
3. The proposed use is consistent with the intent and purpose of the zoning district in which the property is located.
4. Approval is necessary to protect a substantial property right of the applicant.
5. Approval will permit a use which will be compatible with other uses in the area, and which will not be detrimental to other uses, rights or properties in the area.
6. The proposed use is one of the specifically enumerated uses allowed in the zoning district specified.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

SCENIC CORRIDOR REVIEW FINDINGS

1. The structure is so designed that it, in general, contributes to the character and image of the City as a place of beauty, spaciousness, and balance.
2. The exterior design and appearance of the structure is not of a quality or scale so as to cause the nature of the neighborhood to materially depreciate in appearance and value.
3. The structure is in harmony with proposed adjacent development in the area and the Scenic Corridor Zone and is in conformity with the General Plan of the City.

NEGATIVE DECLARATION FINDINGS

The proposed project will not have a significant adverse effect on the environment; specifically in the following areas:

1. It will not have the potential to degrade the quality of the environment.
2. It will not achieve short-term, to the disadvantage of the long-term, environmental goals.
3. It will have no impacts which are individually limited, but cumulatively considerable.
4. It will not cause substantial adverse effects on human beings, either directly or indirectly. (Section 15082, CEQA guidelines)
5. Technical data and research, supplied by qualified experts, assisted the lead agency in identifying potential environmental impacts associated with the project. Through the use of a Mitigated Negative Declaration, the lead agency has recommended mitigation measures in conjunction with the conditions of approval to reduce potential environmental impacts to less than significant thresholds.
6. The subject request has met the scrutiny of the California Environmental Quality Act (CEQA) process, supporting documentation in the areas of drainage, noise, plant surveys, traffic, cultural resources investigations, geologic study, previous studies including the North Fort Bragg Traffic Plan, North Fort Bragg Infrastructure Extension, Fort Bragg Redevelopment Project EIR, the City's General

Plan, Zoning Code and Local Coastal Plan, and the City's Water System Study and Master Plan, along with site analysis were used in order to determine that a Mitigated Negative Declaration could be recommended by the lead agency on this project. Environmental concerns have been adequately addressed through mitigation measures that have also been incorporated into the conditions of approval for the project.

7. All of the referral entities identified have reviewed the proposal and the Initial Study conducted by the lead agency and have no objections to the proposed Mitigated Negative Declaration of Environmental Impact for the proposed project.
8. The following entities were sent copies of this proposal, the Initial Study, and the project's Mitigation and Monitoring Plan to:
  - a) Mendocino County Planning Department;
  - b) Mendocino County Public Works Department;
  - c) Mendocino County Environmental Health Department;
  - d) Mendocino County Air Pollution Control District;
  - e) Caltrans - District 1;
  - f) State Water Quality Control Board;
  - g) State Department of Parks and Recreation;
  - h) California Coastal Commission;
  - i) State Department of Fish and Game;
  - j) State Office of Planning and Research;
  - k) US Department of the Interior;
  - l) US Fish and Wildlife Service;
  - m) Fort Bragg Unified School District;
  - n) Northwest Information Center (Sonoma State University);
  - o) Pacific Gas and Electric;
  - p) Century Cable;
  - q) California Highway Patrol;
  - r) Fort Bragg Police Department;
  - s) Fort Bragg Fire Department;
  - t) Fort Bragg Engineering Department;
  - u) Fort Bragg Redevelopment Agency Executive Director;
  - v) Fort Bragg Water Project Manager; and
  - w) Fort Bragg Deputy City Manager/Public Works.

EXHIBIT NO.	11
APPLICATION NO.	A-1-FIB-97-33
City Staff Report on CDP 10-96/SCR 10-96	

A response due date of December 31, 1996 was given to the above entities.

9. The subject request complies with the applicable policies of the City of Fort Bragg's 1980 General Plan, Zoning Code and Local Coastal Plan as evidenced in the project's Initial Study and staff report.
10. Approval of this request will give consideration to the redevelopment of an underutilized parcel of commercial land in Fort Bragg. The proposed motel, increasing by 19 units, would add tax increment dollars to the Redevelopment Agency, generate additional sales and transient occupancy taxes for this property and provide entry level jobs for the youth and unemployed of this community.

CONDITIONS

1. There shall be full compliance with all the requirements of the Fire, Health, Water, Sewer, Building, and Public Works Departments of the City of Fort Bragg.
2. All public utilities shall be installed underground.
3. Prior to issuance of a building permit for the proposed motel, the applicant shall submit signed and approved copies of the necessary Encroachment Permit(s) from Caltrans to the Community Development Department.

4. Prior to construction, applicant shall install a fire hydrant on the same side of the highway as the motel. Actual location will be determined by the Fort Bragg Fire Protection Authority.
5. Applicant shall install a sprinkler system to Uniform Fire Code Standards for the motel complex.
6. Prior to construction, applicant shall submit improvement plans to the City Engineer for review and approval. Said plans shall demonstrate the engineered water drainage system of infiltration and trenching.
7. Coastal Development Permit 10-96 shall become null and void if the proposed activity has not started within two years of the date of approval for the subject request.
8. This permit may be revoked by the City of Fort Bragg at any time for violation of any of the terms and conditions of this permit by the owner, agents, or the representatives of the applicant.
9. The City, its officers, agents, and employees may inspect the property at any time and the applicant agrees not to deny or impede access to the subject property for the City.
10. This permit shall have no force or effect unless and until, accepted the terms agreed to, in writing by the applicant.

MITIGATION MEASURES

1. The development will be required to use City water and sewer.
2. The existing well will be used for landscaping purposes only. A backflow prevention device shall be installed on said well.
3. Engineered design drainage system of infiltration and trenching. The system would work as follows:
  - a) Runoff from the two easterly buildings and asphalt entrance would be directed into infiltration trenches in the planter area at the south quadrant of the site.
  - b) Runoff from the westerly asphalt areas and the two westerly buildings will be directed to infiltration trenches between the westerly buildings and the westerly property line.
  - c) Under heavy rainfall conditions, the runoff from the westerly building could exceed the ability of these trenches to handle the water. The excess water will be collected in a pump chamber near the northwest property corner. The pump system will pipe the water into a series of infiltration trenches in the northeast quadrant of the property.
4. Elimination of the existing septic system.
5. Disallowance of wood burning stoves and fireplaces.
6. Use low emission mobile construction equipment (e.g., tractor, scraper, dozer, etc.).
7. Water site and clean equipment morning and evening.
8. Spread soil binders on site, unpaved roads, and parking areas.
9. Apply approved chemical soil-stabilizers, according to manufacturers specifications, to all inactive construction areas (previously graded areas which remain inactive for 96 hours).
10. Reestablish ground cover on construction site through seeding and watering.
11. Employ construction activity management techniques, such as: extending construction period; reducing the number of pieces used simultaneously; increasing the distance between emission sources; reducing or changing the hours of construction; and scheduling activity during off-peak hours.
12. Pave construction roads and sweep streets if silt is carried adjacent public thoroughfares.

EXHIBIT NO.	11
APPLICATION NO.	A-1-FTB-97-33
City Staff Report on CDP 10-96/SCR 10-96	

13. Reduce traffic speeds on all unpaved road surfaces to 15 miles per hour or less. Suspend all grading operations when wind speeds (as instantaneous gusts) exceed 25 miles per hour.
14. Wash off trucks leaving the site.
15. Maintain construction equipment engines by keeping them tuned.
16. Use low sulphur fuel for stationary construction equipment.
17. Utilize existing power sources (e.g., power poles) or clean fuel generators rather than temporary power generators.
18. Use low emission on-site stationary equipment.
19. Closure of north driveway.
20. Construction of a left turn lane to Caltrans' standards.
21. Implementation of a corridor preservation setback of 50' from highway centerline.
22. Conduct a field survey in March 1997 to determine the presence of Point Reyes Blenosperma and Roderick's Fritillary.
23. Hire a contractor to retrofit 84 residential units now being served by the City's water system which do not have low flow water fixtures.
24. Landscaping would be drought tolerant vegetation and irrigated by existing well on property.
25. Applicant must demonstrate that he has obtained the necessary amount of water retrofits before the City will approve a building permit or other entitlement necessary to let the motel go into business.
26. The project shall be designed that night lighting is shielded downward and directed away from adjacent properties.
27. During construction, prior to occupancy, the following shall occur:
  - a) Monitoring will consist of directly watching the major excavation process. Monitoring will occur during the entire work day, and will continue on a daily basis until a depth of excavation has been reached at which resources could not occur. This depth is estimated as usually about five feet below grade at the beginning of the project, but may require modification in specific cases, and will be determined by the monitoring archaeologist based on observed soil conditions.
  - b) Spot checks will consist of partial monitoring of the progress of excavation over the course of the project. During spot checks, all spoils material, open excavations, recently grubbed areas, and other soil disturbances will be inspected. The frequency and duration of spot checks will be based on the relative sensitivity of the exposed soils and active work areas. The monitoring archaeologist will determine the relative sensitivity of the parcel.
  - c) If prehistoric human interments (human burials) are encountered within the native soils of the parcel, all work should be halted in the immediate vicinity of the find. The County Coroner, project superintendent, and the Agency Liaison should be contacted immediately. The procedures to be followed at this point are prescribed by law.
  - d) If unique archaeological resources other than human burials are encountered, the project should be modified to allow the artifacts or features to be left in place, or the archaeological consultant should undertake the recovery of the deposit or feature. Significant cultural deposits are defined as archaeological features or artifacts that associate with the prehistoric period, the historic era Mission and Pueblo Periods and the American era up to about 1900. A representative of the Native American community must be contacted in all cases where prehistoric or historic era Native American resources are involved.

EXHIBIT NO.	11
APPLICATION NO.	A-1-ETB-97-33
City Staff Report on CDP 10-96/SCR 10-96	

- e) Whenever the monitoring archaeologist suspects that potentially significant cultural remains or human burials have been encountered, the piece of equipment that encounters the suspected deposit will be stopped, and the excavation inspected by the monitoring archaeologist. If the suspected remains prove to be nonsignificant or noncultural in origin, work will recommence immediately. If the suspected remains prove to be part of a significant deposit, all work should be halted in that location until removal has been accomplished. If human remains (burials) are found, the County Coroner must be contacted.
- f) Equipment stoppages will only involve those pieces of equipment that have actually encountered significant or potentially significant deposits, and should not be construed to mean a stoppage of all equipment on the site unless the cultural deposit covers the entire building site. During temporary equipment stoppages brought about to examine suspected remains, the archaeologist should accomplish the necessary tasks with all due speed.
28. In the event that unique archaeological resources are unearthed during project construction, the applicant shall cap those resources by adding a protective layer of dirt and then placing the improvement right on top of this protective layer.
29. Applicant shall omit the words "walk to ocean" between buildings two and three.

EXHIBIT NO.	11
APPLICATION NO.	A-1-FTB-97-33
MILLER	
City Staff Report on CDP 10-96/SCR 10-96	

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EXHIBIT NO. 12
APPLICATION NO. A-1-FTB-97-33
MILLER
City Attorney Memo

RECEIVED  
MAR 21 1997

MEMO

CITY OF FORT BRAGG

**DATE:** March 20, 1997

**TO:** Deputy City Manager/Administration  
and  
Planning Director

**FROM:** City Attorney

**SUBJECT:** APPEAL BY DONALD Y. & HELEN MILLER/SCR 10-96

---

*With regard to the above matter and your March 12, 1997 Memo, I have reviewed the draft of the hearing notice and have no changes.*

*With respect to the issue of Scenic Review, as you have noted, paragraph 19 (5) of the local coastal plan provides that:*

*"The Scenic Review Committee must approve the site plan and submitted drawings prior to the issuance of a Coastal Development Permit. (emphasis added) The Scenic Review Committee shall approve an applicant's site plan and submitted drawings if it finds that the proposed structure meets the following criteria:*

*(a) The structure shall be so designed that it, in general, contributes to the character and image of the City as a place of beauty, spaciousness, and balance.*

*(b) The exterior design and appearance of the structure is not of a quality or scale so as to cause the nature of the neighborhood to materially depreciate in appearance and value.*

*(c) The structure is in harmony with proposed adjacent development in the area and the Scenic Corridor Zone and is ~~not~~ in conformity with this LCP."*

*The effect therefore of this language, in my opinion, is that even though both matters, that is the Coastal Development Permit and the Scenic Review matters go forward simultaneously, the local Coastal Plan provides that before a Coastal Development Permit can issue the Scenic Review must be approved. The effect therefore is that the Scenic Review Permit is a condition to the Coastal Development Permit. In the Miller case, even*

EXHIBIT. 8

though it is not an express condition, it certainly is an implied condition and therefore that Coastal Development Permit cannot issue until the Scenic Review is completed. And, if the Scenic Review is never completed, a Coastal Development Permit will not issue. The fact that it has been approved by the Planning Commission does not mean the permit has "issued". It will not "issue", until the Scenic Review is completed. Additionally, upon the City Council taking action on the Scenic Review, a second Notice of Final Action on the Scenic Review will take place, indicating final action will be taken by the Coastal Commission. Additionally, the CEQA process in connection with the Coastal Development Permit must be completed during the Coastal Development Permit hearing process. Any appeals of that process will be commensurate with and identical to the Coastal Development Permit process.

To reiterate, it's my opinion that the Scenic Review is an implicit condition to the issuance of a Coastal Development Permit when both matters have been run simultaneously. I believe that in the future they should continue to be run simultaneously, but it be made absolutely clear to applicants that the issuance of a Coastal Development Permit will be conditioned explicitly upon approval of the Scenic Review in order to conform to the language of the Local Coastal Plan.

Lastly, I believe that the permit status notification document which is prepared following final action by the Planning Commission should contain language that an appeal can be had to the City Council as well as the Coastal Commission since that is, in fact, true. The public, as well as the applicant, should be made aware of that fact as early and as many times during the process as necessary. If there are any further questions regarding this matter, please advise.

TCL:cac

<b>EXHIBIT NO.</b>	12
<b>APPLICATION NO.</b>	A-1-FIB-97-33
<b>MILLER</b>	
City Attorney Memo	

<b>EXHIBIT NO.</b>	13
<b>APPLICATION NO.</b>	A-1-FTB-97-33
MILLER	
Notice of Public Hearing SCR Appeal	



## CITY OF FORT BRAGG

*Incorporated August 5, 1889*  
 416 N. Franklin St.  
 Fort Bragg, CA 95437  
 FAX 707-961-2802

### NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Fort Bragg City Council will conduct a public hearing at a regular meeting to be held at 7:00 p.m., or as soon thereafter as the matter may be heard, on **MONDAY, APRIL 14, 1997**, at the Town Hall, southwest corner of N. Main and Laurel Streets (363 North Main Street), Fort Bragg, California 95437. The public hearing will concern the following item:

An appeal by **DONALD Y. MILLER AND HELEN MILLER** in conjunction with the Planning Commission decision of February 26, 1997 denying SCR 10-96; Don Miller (owner); 1141 North Main Street; Demolition of existing 11-unit motel and construction of new 2-story, 30-unit motel, parking and landscaping. The Planning Commission took the following action:

"MOTION by Doyle, seconded by Stuart to DENY SCR 10-96 with the following findings:

#### "SCENIC CORRIDOR REVIEW FINDINGS

1. The structure is so designed that it, in general, does not contribute to the character and image of the City as a place of beauty, spaciousness, and balance.
2. The exterior design and appearance of the structure is of a quality or scale so as to cause the nature of the neighborhood to materially depreciate in appearance and value.
3. The structure is not in harmony with proposed adjacent development in the area and the Scenic Corridor zone and is not in conformity with the General Plan of the City.

VOTE: Ayes: Stuart, Doyle and Woelfel.  
 Noes: Bailey and Matson."

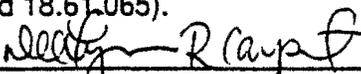
In appealing this decision, the appellants state: "This is an appeal of the Scenic Corridor review permit denial by the Planning Commission. The proximity to the haul road is dictated by the property boundaries and setback requirements. Building height falls well below the 35 foot maximum. We have designed the project to meet all environmental, zoning and building codes. We and/or the City staff have addressed all the concerns that the Planning Commission raised. There is no reason why this project should not go forward as planned."

The following is available for review and/or copying during normal office hours at the Fort Bragg City Hall, 416 North Franklin Street, Fort Bragg:

- A. The complete project file is available in the Community Development Department.
- B. The following information is available with the City Clerk:
  1. March 3, 1997 Appeal by Donald Y. Miller and Helen Miller; and
  2. February 26, 1997 Planning Commission Permit Status Notification.

All interested persons are invited to appear at this meeting to present their comments. Written communications should be delivered to the City Clerk at, or prior to, the public hearing. If you challenge the above case in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence. An appeal to the California Coastal Commission may be filed after the exhaustion of the local appeal process and within ten (10) days of Coastal Commission receipt of the Notice of Final City Action (FBMC 18.61.064 and 18.61.065).

Dated: March 24, 1997.

  
 \_\_\_\_\_  
 DeeLynn R. Carpenter, CMC/AE  
 City Clerk

PUBLISH: April 3, 1997.



**CITY OF FORT BRAGG**

*Incorporated August 5, 1889*  
416 N. Franklin St.  
Fort Bragg, CA 95437  
FAX 707-961-2802

RECEIVED  
AUG 12 1997  
CALIFORNIA  
COASTAL COMMISSION

August 7, 1997

CA Coastal Commission  
Attn.: Jo Ginsberg  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105-2219

Dear Ms. Ginsberg:

This letter is written to help clarify the City of Fort Bragg's position on the Miller project related to the condition of requiring a left turn lane.

Based on past projects' traffic studies and a Caltrans response, the City required this condition to be consistent with a previous Caltrans concern. However, we are now aware that Caltrans does not feel this left turn lane is required at this time.

The City requests that the condition be amended to provide that Mr. Miller be required to deposit funds to cover the cost of the left turn lane for his frontage at such time as those improvements are required by Caltrans and the City.

Should you have any questions regarding this matter, please give me a call at (707) 961-2828.

Sincerely,

Scott Cochran  
Planning Director

SCC/brp

<b>EXHIBIT NO.</b> 14
<b>APPLICATION NO.</b> A-2-FTB-97-33
MILLER
City Correspondence